



## Tax Increases May Bring Rough Waters for Wealth Planning

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There is much trepidation surrounding anticipated estate tax increases and difficulty in safeguarding family wealth. The current estate and gift tax law “sunset” on January 1, 2026. Two bills recently introduced to the Senate may accelerate the timeline and further erode protections.

### THE “SUNSET”

Under current law, an individual has an exemption of \$11.7 million (\$10 million subject to an annual inflation rider)—\$23.4 million for a married couple—to shelter transfers to his or her children or other beneficiaries without being subject to gift/estate tax. Any amount over the exemption will be subject to a 40 percent tax. On January 1, 2026, the exemption will sunset and automatically drop to \$5 million per person (with the inflation rider about \$6 million per person). Clients have been making gifts to multigenerational trusts to “lock in” their exemptions before they evaporate. Two bills recently introduced in the Senate are even less generous to the wealthy and would accelerate the timetable.

### THE 99.5% ACT

The 99.5% Act was introduced by Bernie Sanders on March 25, 2021. This Bill would reduce the exemption to \$3.5 million per person and would increase the 40 percent flat rate currently in effect to a progressive rate ranging from 45-65 percent. In addition, the Bill would reduce the ability to use the annual exclusion. Currently, each individual can transfer up to \$15,000 annually to an unlimited number of recipients without using any estate/gift exemption. The 99.5% Bill would reduce the annual exclusion to \$10,000 annually and cap it at \$20,000 per donor. For example, if a married couple has four children and eight grandchildren, under current law they can make “tax free” combined gifts of \$30,000 to each of them for a total of \$360,000 annually. If the 99.5% Bill passes, the total tax-free amount that could be transferred would be reduced to \$40,000 annually. The Bill also attacks valuation discounts and other valuable estate tax planning techniques. If passed, the Bill would become effective January 1, 2022.

### THE SENSIBLE TAXATION AND EQUITY PROMOTION (STEP) ACT

On the heels of the 99.5% Act, the STEP Act seeks to change the long-standing rules around step-up in basis at death and impose a capital gains tax. Under current law, a decedent’s assets receive a “step up” to fair market value at death. Thus, a portfolio of marketable securities, real estate, business interests and all other property held by a decedent with a low cost basis will automatically have the basis adjusted to the fair market value as of the date of death, effectively eliminating all capital gains for the beneficiaries. The STEP

Act would limit this treatment to \$1 million of gain, per decedent. As proposed, this legislation would become effective January 1, 2021.

### WHAT CAN YOU DO?

It seems unlikely that either of these recent Bills will pass in their current form, but it is possible that a budget reconciliation bill—which can be passed with a simple majority of 51 votes in the Senate—could be passed to provide financial support for President Biden’s infrastructure plan. Any individual with a net worth of more than \$3.5 million, or a married couple with a net worth of more than \$7 million, should discuss their options in this uncertain environment with their estate planning attorney. In addition to the estate tax changes on the horizon, the current low interest rate environment and the availability of valuation discounts for business owners makes this a perfect time to implement succession planning to secure a family’s financial legacy.



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