

Tax Bulletin: Year-End Legislation Memo

Traditionally our year-end tax and estate planning memo addresses changes to tax law and our thoughts related to planning opportunities, but given the uncertainty in proposed legislation this year, we are taking a different approach. We look forward to providing an update before year-end based on what transpires, but in the meantime, we have summarized below the proposals involved and our related thoughts.

Build Back Better Act

The Build Back Better Act (BBBA) was passed by the House on November 19, 2021. However, the Bill must still make its way through the Senate where further negotiations may significantly alter the House version.

Notable tax changes in the House Bill include:

- An increase in the limitation on individual income deductions for state and local taxes (SALT) from \$10,000 to \$80,000;
- Expansion of the net investment income tax (NIIT) to include ordinary income from pass-through entities;
- A “millionaires’ tax” on the income of individuals, trusts and estates;
 - ◊ Individuals would see a new surtax of 5% on annual modified adjusted gross income (AGI less investment & business interest deductions) over \$10 million

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- and 8% (5% plus an additional 3% surtax) on income over \$25 million;
- ◊ Trusts would see the same surtaxes apply to modified adjusted gross income (AGI less specific deductions allowed for trusts and charity) over \$200,000 and \$500,000, respectively.
- Future changes to IRA contributions and Required Minimum Distributions (RMDs) (proposed to be effective January 1, 2029);
 - ◊ Prohibition on additional contributions to IRAs where the taxpayer is a “high earner” (defined as a single taxpayer earning above \$400,000 per year or married couple filing jointly earning above \$450,000 a year) and has total qualified accounts exceeding \$10 million;
 - ◊ In the year following aggregate qualified account balances totaling \$10 million or more, a minimum distribution of 50% of the amount over \$10 million must be made;
 - ◊ Where the accounts total \$20 million or more and any portion of that is in a Roth account, a distribution of the lesser of the excess of \$20 million or the balance in all Roth accounts must be made;

- ◇ Elimination of Roth conversions for high earners beginning in 2032; and
- ◇ Elimination of “Backdoor” Roth contributions (non-deductible Traditional IRA contributions converted to a Roth IRA immediately) as of January 1, 2022 at all income levels.

Below are some of the other changes that have been proposed throughout the year that were not included in the final House Bill:

- An increase in the corporate tax rate;
- An increase in the top individual income tax rate;
- An increase in the long-term capital gains tax;
- A decrease in the lifetime estate tax exemption;
- A decrease in the lifetime gift tax exemption;
- Changes to the “step up” in tax basis of assets owned at death;
- A “billionaires’ tax” tax on unrealized gains of appreciated assets; and
- Changes in rules applicable to grantor trusts.

While the historically large estate and gift tax credit has survived the current legislative proposal, it could come under scrutiny again in the future. As such, anyone with a large amount of exemption remaining should consider an analysis of gifting capacity and subsequent gifts (either outright or via entities such as trusts) prior to year-end.

Additionally, while the House Bill does not increase the top ordinary income and capital gains tax rates directly, the potential millionaires’ surtax will increase the combined tax rates

applicable to taxpayer income over the thresholds. Therefore, accelerating income into 2021 – including incurring capital gains in 2021 – may be advantageous to those taxpayers who expect to have income subject to the surtaxes in 2022.

A review of eligible retirement accounts prior to year-end is also recommended before changes to Roth conversion allowances become effective.

Infrastructure Investment and Jobs Act

On Monday, November 15th, President Biden signed into law the Infrastructure Investment and Jobs Act (IIJA). While not as impactful to as many Americans as the BBBA could be, there were two interesting tax-related provisions to note:

- Additional reporting of transactions involving cryptocurrencies by brokers; and
- Termination of the employee retention tax credit three months earlier than scheduled;
 - ◇ The credit will only be available for wages paid before October 1, 2021, not January 1, 2022.

In conclusion, we encourage you to reach out to your Chilton and/or other advisors to discuss your personal planning goals and opportunities. We are happy to help facilitate those conversations, and we will be in touch soon with additional insight.



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Kevin A. Wells joined Chilton Trust in November 2020 as Senior Vice President, Head of Tax Services. Prior to joining Chilton, Mr. Wells was a client manager at Sapere Wealth Management in Charlottesville, VA where he advised clients on all areas of their financial matters, including taxation. Before Sapere, Mr. Wells was the manager of the tax group at Silvercrest Asset Management Group, where he handled tax compliance and planning for individuals, trusts, partnerships and foundations. Mr. Wells joined Silvercrest after earning his MBA from NYU Stern School of Business where he focused on investment management and business law. Prior to attending business school, Mr. Wells was an auditor with Deloitte & Touche in their financial services group, auditing public & private investment vehicles in New York City. Mr. Wells earned his B.S. in Accounting from Virginia Tech in Blacksburg, VA. Mr. Wells is a Certified Public Accountant (CPA) and a Personal Financial Specialist (PFS).



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Gina M. Nelson is a Senior Vice President – Head of Fiduciary Services with over 15 years of experience in various trust and estate roles. Prior to joining Chilton Trust, Ms. Nelson served as Executive Director/ Global Head of Trusts and Estates Risk at J.P. Morgan where she was responsible for Risk Management of all of J.P. Morgan’s trust companies, which include the U.S., Delaware, Bahamas, and other international entities. Prior to J.P.Morgan, Ms. Nelson has over 10 years of trust company experience, serving as a resource on complex fiduciary matters, reviewing and approving new business, and developing and enhancing fiduciary processes and procedures. Ms. Nelson received her B.A. in French and European Studies from Vanderbilt University and her J.D. from the University of Minnesota School of Law. Ms. Nelson also devotes her time to organizations focused on ocean conservation.

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