

Biden Administration's Estate Plan Changes, How Will They Affect You

For millions of Americans, the country's recent transition to a new administration will have a significant impact on tax and estate planning. This is particularly true for high-income earners and high-net worth individuals, but even those with more modest incomes and assets may be affected. In general, many families who have been safe from exposure to estate taxes and other forms of inheritance tax for the past decade are going to find themselves incorporating estate planning into their overall financial planning strategy.

Estate Tax Updates

During the past three presidential administrations, many families updated their estate plans to align with the estate tax exemptions included in the **American Taxpayer Relief Act** and the **Tax Cuts and Jobs Act**. As it stands, each individual is allowed to distribute a combined total of \$11.7 million (\$23,160,000 for a married couple)—in life or at death—without federal estate tax consequences.

The Biden administration has proposed a reduction of this exemption to \$3.5 million per person (\$7,000,000 for a married couple), less than one-third of the current exemption. On top of that, the proposal seeks to increase the top estate tax rate from 40 to 45 percent.

Often referred to as the "death tax," estate tax is applied to an individual's gross taxable estate upon death. This includes any and all property, including but not limited to real estate property, vehicles, tangible personal property, bank accounts, retirement accounts and other investments, and some life insurance death benefits. This tax, which can be significant on large estates, must be paid within nine months of death.

The Biden administration has proposed that the lesser exemption be made retroactive back to January 1, 2021. Many families who were not even close to the exemption threshold last year may now find themselves with a substantial estate tax liability. If you are concerned about upcoming tax reform and how it may impact you and your family, the estate planning lawyers at Lissner & Lissner LLP can help. Contact us today at (212) 307-1499 for a confidential consultation about your case.

Gift Taxes

Where the estate tax is levied upon death, the gift tax is levied when the owner of an asset transfers that asset while still alive. Currently, the federal gift tax exemption allows gifts of up to \$15,000 per person without triggering the gift tax. You can make as many of those gifts as you want, but any gifts larger than \$15,000 will be subject to a gift tax on the excess amount.

Those larger gifts will also be applied to your lifetime federal estate tax exemption, which as we've discussed is currently \$11.7 million, but will likely be reduced to \$3.5 million by the Biden administration. Individuals and families with very large estates often utilize the gifting strategy during their lifetimes to reduce their overall estate. In doing so, they can reduce or eliminate the estate tax upon death. But with that exemption likely plummeting more than \$8 million per person, many families are going to have to update their estate plans, and soon.

Capital Gains Tax Updates

The Biden administration also wants to eliminate the step-up tax basis, which currently allows appreciated assets transferred upon death to be valued based on the value at death, rather than the value when originally acquired by the decedent. This can significantly reduce the capital gains tax liability when a person inherits and then sells an asset. But the new administration is proposing to eliminate this tax savings for assets transferred at death. This can have serious tax consequences for an individual who inherits an asset with significant appreciation.

Consider the following example: Bob purchases property for \$10,000 in 1995 and transfers the property to his son at death, at which time it is worth \$100,000. Bob's son then sells the property for \$120,000. Under the old administration, Bob's son would only pay capital gains tax on the \$20,000 difference between the stepped-up value and what he sold it for. Under the new administration, however, Bob's son would pay a capital gains tax on the full \$110,000 appreciation from the original purchase price.

There is Still Time to Take Advantage of the Old Tax Laws

Although Biden's proposed tax reforms may go into effect retroactive back to Jan 1, it is more likely that the changes won't occur until later this year.

The large exemption that is currently in place allows individuals and married couples to transfer substantial assets to their children, grandchildren, and other heirs without losing any of those assets to estate or gift taxes. But that is about to change. If you are concerned about how these changes will impact you, contact an experienced NYC estate planning attorney. Contact Lissner & Lissner LLP today at (212) 307-1499 for a confidential consultation about your case.

Why You Should Meet With an Estate Planning Lawyer Today

The uncertainty around possible tax reform means that everyone with an estate of any size should consult with a financial adviser and estate planning attorney, even those individuals and families who don't expect to be directly impacted by the changes. Interest rates are still historically low, and there are multiple gift and estate planning strategies that can effectively utilize these low rates, while they last. Furthermore, time is running out to make use of certain estate and tax planning strategies that may work in your favor.

With the complexities of the legislative process, and numerous other priorities dominating the new administration's first 100 days in office, it is highly unlikely

that tax law changes will be made retroactive to Jan 1. As such, it is in your best interest to meet with an estate planning lawyer and take advantage of the current laws, before they disappear for the foreseeable future. The clock is ticking.

Contact Compassionate Estate Planning Attorneys in New York City

For more than 30 years, Lissner & Lissner LLP, has provided New Yorkers with trusted guidance for wills and trusts, advanced health care directives, and other aspects of the estate planning process.

To speak with a knowledgeable lawyer about creating a will in New York City, call [\(212\) 307-1499](tel:2123071499) or contact us online.