

Estate Planning in Uncertain Times

March 5, 2021 J. Mitchell Miller, John Collins, Jamie Carter, Joseph Collins

PRACTICES Tax-Exempt Organizations and Private Foundations, Trust and Estate Administration, Family Office, Family Wealth and Estate Planning, Private Clients and Estate Planning, Tax

With the Senate controlled by Democrats, Congress may propose major changes to the estate and gift tax rules soon. The changes could reverse parts of the Tax Cuts and Jobs Act of 2017 (“TCJA”) passed early in President Trump’s term. Some of the changes proposed by President Biden are: (1) restore the estate and gift tax exemption rates to 2009 levels (\$3.5 million estate tax exemption and \$1 million gift tax exemption, and maximum tax rate increased from 40% to 45%) and (2) eliminate basis step-up for inherited assets.

The current gift and estate tax exemption is \$11,700,000 per person (\$23,400,000 for a married couple); these amounts reflect increases from \$5,000,000 per person in 2017 as part of TCJA and are scheduled to revert to about \$6,000,000 per person in 2026 if no other action is taken by Congress.

Historically, changes in our tax laws have become effective either on the date the law passes or the date the proposal was filed, but there are no constitutional prohibitions against Congress making changes retroactive to January 1, 2021. Although many commentators believe that such legislation will become effective upon becoming law or at the start of 2022, there is no guarantee that a gift made in January of 2021 will not result in gift tax if the amount exceeds the donor’s revised gift tax exemption as established in that legislation.

For clients who want to take advantage of their current gift tax exemptions but mitigate the risk of a retroactive application of a reduced exemption amount, there are some transactions they can consider. In addition, there are other estate planning transactions that can be used to reduce, freeze, or control the growth of their estates.

[Read the full alert here.](#)