



House Ways & Means Committee Takes Aim at Exemption Amounts, Valuation Discounts & Grantor Trusts

September 17, 2021

On September 15, 2021, the House Ways and Means Committee reported legislation to meet the Ways and Means directive in the FY 2022 Budget Resolution.

The following are the most important proposals affecting high-net-worth individuals:

- For decedents dying and gifts made **after 12/31/21**, the estate and gift tax exemption drops from \$11.7 million to slightly more than \$6 million.
- Tax on capital gains and qualified dividends increases from 20% to 25%, effective for gains and dividends **received or accrued after September 13, 2021** (with a binding contract exception).
- For grantor trusts created **after date of enactment** (and for trust property transferred to pre-effective date grantor trusts), the value of the assets will be included in the grantor's gross estate, and distributions from the trust will be taxable gifts.
- Any sale or exchange between a grantor and a grantor trust (other than a fully revocable trust) will be a taxable transaction. This provision applies to grantor trusts created after the effective date and portions of pre-effective date trusts attributable to contributions made after enactment.
- No discounts for lack of marketability or lack of control are permitted for nonbusiness assets sold or gifted **after date of enactment**.

Importantly, there is no proposal to tax appreciated property transferred by gift or at death, and there is no proposal to impose a carryover basis regime at death.

The following additional proposals are aimed at high income earners and, except where specifically noted, would be **effective for tax years beginning after 12/31/21**:

- Highest marginal individual income tax rate increases to 39.6% for taxpayers with AGI in excess of \$400,000/\$450,000
- 3% surcharge is imposed on modified AGI of individuals, trusts and estates in excess of \$5 million (or \$2.5 million for a married individual filing separately).
- 3.8% net investment income tax (NIIT) is extended to cover net investment income from trade or business for taxpayers with more than \$400,000/\$500,000 in taxable income.

- The maximum allowable deduction under section 199A is limited to \$500,000 for a joint return, \$400,000 for an individual return, \$250,000 for a married individual filing a separate return, and \$10,000 for a trust or estate.
- **Effective for tax years beginning after 12/31/20**, the \$500,000 limitation on the use of excess business losses is made permanent.

Other proposals potentially affecting individuals are the following:

- Carried Interests. **Effective for tax years beginning after December 31, 2021**, the 3-year holding period required for gain attributable to an applicable partnership interest to qualify for long-term capital gain treatment is extended to 5 years.
- Qualified Small Business Stock. **Effective for sales and exchanges after September 13, 2021** (with a binding contract exception), the special 75% and 100% exclusion rates for gains realized from certain QSBS will not apply to taxpayers with AGI of \$400,000 or more. The baseline 50% exclusion in 1202(a)(1) remains available for all taxpayers.
- Conservation Easements. For conservation easements contributed after 12/31/16, or historic preservation easements contributed after 12/31/18, by partnerships and other pass-through entities, no charitable deduction is allowed if the value of the contribution exceeds 2.5 times the sum of each partner's adjusted basis in the partnership. This disallowance rule does **not** apply to contributions that meet the requirements of the 3-year holding period rule or contributions by family partnerships.

Observation. The timing of final passage of the bill in the House is unclear. In particular, we expect that the SALT deduction limitation will be addressed before the vote on final passage. The bill will then proceed to the Senate where the Finance Committee will take it up. We expect that changes will occur throughout the process. We will provide updates as they become available.

For additional information, please contact a member of our [Estate Planning Team](#).
