



TAX PROPOSALS INCLUDED IN THE BUILD BACK BETTER (BBB) ACT THOUGHT LEADERSHIP PERSPECTIVES

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THE HOUSE HAS PASSED THE BUILD BACK BETTER PLAN. THE BILL NOW GOES TO THE SENATE, WHERE ADDITIONAL COMPROMISES AND CHANGES COULD BE MADE.

Here are the plan's tax provisions and how they could affect you.

What is NOT Included

- Increasing the Top Rate to 39.6%
- Increasing the Capital Gain Rates to 25%
- Limitations on Qualified Business Income (QBI) Deduction
- Decreasing the Estate Tax Unified Credit
- Eliminating Step-up in Basis Upon Death
- Changing Grantor Trust Rules
- Limiting Use of Valuation Discounts

What IS Included

- **5%/3% 'Surcharge'**

A new tax would be introduced, imposing a 5% tax on individuals with modified adjusted gross income over

\$10,000,000. This would also apply to trusts with adjusted gross income over \$200,000. There would also be an additional 3% tax on individuals with modified adjusted income over \$25,000,000 and trusts with adjusted gross income over \$500,000. The surcharge would come into effect for tax years after December 31, 2021.

- **Application of Net Investment Income Tax to Trade or Business Income**

For taxpayers with income over \$400,000, the 3.8% Net Investment Income Tax will be expanded to tax the trade or business income derived in the ordinary course of a trade or business. This does not apply to wages subject to FICA. This expansion of the Net Investment Income Tax would be applicable to taxable years after December 31, 2021.

- **Increase SALT Cap**

Pending amendment to increase the state and local tax deduction cap to \$80,000 from \$10,000 through 2031.

- **Limit Certain Section 1202 Gain Exclusion**

For taxpayers with income over \$400,000, the 1202 exclusion rate for gains realized from certain qualified small business stock will be limited to a 50% exclusion. The 50% exclusion limit applies to sales after September 13, 2021.

- **Modification of Rules Relating to Retirement Plans**

The House proposal would limit retirement planning for “high income taxpayers”. This is defined as married filing jointly taxpayers with taxable income over \$400,000.

‘High income taxpayers’ (1) cannot make contributions to a ROTH or traditional IRA for a tax year if the total value of retirement accounts exceeds \$10 million at the end of the year and (2) must take a required minimum distribution equal to 50% of the amount of the account balance over \$10 million (larger distribution required for balances over \$20 million). Furthermore, the proposal would prohibit all after-tax contributions being converted to a ROTH, regardless of income level. These changes would apply for tax years after December 31, 2021.

High income taxpayers also cannot make ROTH conversions from IRAs and employer-sponsored plans. This change would apply for tax years after December 31, 2031.

Taxpayers, *regardless of income level*, cannot convert after-tax IRA contributions to a ROTH. This change would apply for tax years after December 31, 2031.

- **Audit More Taxpayers with Income over \$400,000**

The Internal Revenue Service (IRS) has had its budget cut over the past decade. That has meant a lack of resources for tasks such as assisting taxpayers with questions and auditing tax returns. The proposal calls for increased funding for the IRS specifically for enhanced enforcement. The focus will be on auditing large corporations, businesses, estates, and ‘high-income’ individuals—defined as income greater than \$400,000.

What could an increased audit rate mean? A greater likelihood that you could be audited. In a best-case scenario, an audit is extremely time consuming but results in no change. However, even in a no change audit, additional time will be spent by taxpayers and/or tax professionals to deal with the audit.

There is still a great deal of uncertainty as to both ‘if’ and ‘when’ the above tax provisions could pass. The House could make changes to the above listed provisions. These significant changes merit further discussion now and could require proactive tax planning.

DURING THESE UNCERTAIN TIMES, TAKING PROACTIVE TAX PLANNING STEPS IS ESSENTIAL. WE STAND READY TO HELP YOU ADDRESS ALL YOUR PLANNING CONCERNS. PLEASE REACH OUT TO A MEMBER OF YOUR FAIRMAN GROUP FAMILY OFFICE SERVICE TEAM OR CONTACT OUR OFFICE TODAY.

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