



SHEPPARD LAW FIRM

A T T O R N E Y S A T L A W

FIRST VOLLEY - HOUSE WAYS & MEANS COMMITTEE UNVEILS TAX PLAN

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In our efforts to keep you up to date, here's a synopsis of President Biden's tax proposal that arises from the House Ways and Means Committee. The bill is not law until passed by the Senate and House and signed by the President. There will likely be changes through negotiations. Here's our summary:

Gift and Estate Tax Provisions

Estate and Gift Exemption Decrease. Currently the gift and estate tax exemption is \$11.7 million per taxpayer. The bill would reduce it to approximately \$6,020,000 effective December 31, 2021.

If You Own a Farm - you have a special exemption to reduce its value, rather than being taxed at highest and best use. The farm provisions are the only pro-taxpayer provisions in this legislation.

Taking Away Estate Planning Tools – Many of you know that the Sheppard Law Firm uses advanced estate planning strategies, including SLAT (Spousal Lifetime Access Trusts), IDGT (Intentionally Defective Grantor Trusts), and sale to IDGT, GRAT (Grantor Retained Annuity Trust) and QPRT (Qualified Personal Residence Trust) to name a few.

All of these strategies involve retaining grantor trust status for income tax purposes yet enabling a transfer for gift tax purposes, excluding assets from the grantor's estate.

While it's unclear whether the GRAT and QPRT would be eliminated under the law as they are both sanctioned by the Internal Revenue Code, IDGT and SLAT strategies would be eliminated. There are other issues with QSST (Qualified Subchapter S Trusts). *The date of enactment of the law would be the date where these strategies are eliminated.*

Insurance Trust Rules Change – Irrevocable Life Insurance Trusts (ILIT) would no longer be able to use trust income to pay premiums without including the insurance proceeds in the grantor's estate for estate tax purposes.

Sales to IDGTs – Another tool in our arsenal to minimize gift and estate taxes is to create a sale between the grantor and an IDGT. Under the current law, no capital gain is recognized. This legislation would force recognition of capital gain.

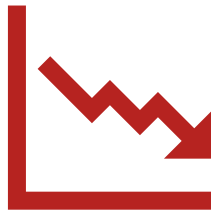
Valuation Rules – You may know that when transferring interests in businesses, real estate and even investments the current law provides for a discount when those interests are held in a company, partnership or LLC. The discounts relate to the fact that the closely held business interests aren't marketable, are usually a minority interest and lack voting control.



Passive business interests and other non-business assets would no longer receive these discounts on valuation. The only exception are active business interests where the taxpayer is an active participant.

Income Tax Provisions – Estates and Trust with income over \$100,000 pay an additional three percent (3%) surtax on their modified adjusted gross income.

Keep in mind that irrevocable trusts that don't pass through their income currently are taxed at the highest federal marginal rate to the extent that the income is equal to or exceeds \$13,050. Individuals don't pay the highest marginal rate until they have \$523,000 of taxable income. This 3% surcharge on AGI over \$100,000 adds to the disadvantage of accumulating income.



Capital Gains – The long-term capital gain tax rate would increase from 20% to 25%, effective immediately, for married couples filing jointly with taxable income of more than \$450,000, individuals with taxable income of more than \$400,000, and trusts and estates with taxable income of more than \$12,500. Including the new 25% rate, the new 3% surcharge, and the current 3.8% surtax on net investment income, the highest marginal long-term capital gain tax rate would rise to 31.8% under the House proposal.

Qualified Small Business Stock Exclusion – New provision cap gains that would otherwise not be taxable at fifty percent (50%).

WHAT IS NOT PART OF THE BILL?

Step up in basis – Congress did not include a provision that would eliminate the step-up in tax cost basis at death.

No deemed sale at death – which would have triggered capital gains.

No added limitations on GRATs – so short term GRATs appear to remain feasible.

No elimination of dynasty planning – to the extent that taxpayers have enough exemption left to engage in planning that eliminates estate taxes at each generational level.

No increase in gift/ state tax rates – while many strategies are threatened, the actual tax rate will remain the same.

No estate tax surcharges for billionaires – Good news for Jeff Bezos and Bill Gates.

What should clients do now, before a bill passes?

Clients should focus on creating SLATs, undertake sales to grantor trusts using valuation discounts, use their exemptions before they use them. For clients who have already exhausted their gift tax exemption but not their GST tax exemption, it may make sense to gift equal to the balance of their GST tax exemption and pay tax on the gift. If the donor lives for three years from the date of the gift, the gift tax paid will be removed from the estate.

We'll keep you posted with further developments.

For more information visit our website at floridaestateplanning.com or join our Q&A Group on Facebook (see QR code below)



www.facebook.com/groups/floridaestateplanning

Craig Hersch

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Craig R. Hersch is a Florida Bar Board Certified Wills, Trusts & Estates attorney and holds his Florida CPA license, with over 30 years of experience in his practice. Craig is a partner at Sheppard, Brett, Stewart, Hersch, Kinsey & Hill and has created several trademarked processes tied to his estate planning and administration practice, including The Family Estate & Legacy Program and The Estate Settlement Program.



Craig has authored six books for clients: The Florida Estate Planning Guide, Selecting Your Trustee, Common Cents Estate Planning, Legal Matters When a Loved One Dies, Asset Alignment and Your Estate Plan and Common Cents Estate Planning II. His work has appeared in several professional journals, including The Practical Tax Lawyer, and The Florida Bar Journal, as well as being on the editorial advisory board for Trusts & Estates Magazine, the premier trade journal for estate planning attorneys, CPAs, and financial advisors. Craig also writes a weekly estate planning column that is published in Sanibel's Island Sun newspaper and on his firm's blog.

Craig is a multiple graduate of the University of Florida with accounting and law degrees and has provided his expertise as a continuing education lecturer for The Florida Bar and the Florida Institute of Certified Public Accountants.

Craig holds an AV Martindale Hubbell rating, the highest attainable by the independent national attorney rating service, has been selected as a Worth 100 Top Attorney and has been named to the Super Lawyers list every year since 2009, a highly-esteemed recognition given to no more than five percent of attorneys in Florida.

During his free time, Craig enjoys competing in triathlons, having finished an Ironman distance race and seven half-Ironman races over the last decade. Craig is married to his wife, Patti, and they have three daughters: Gabrielle, Courtney, and Madison.

Michael B. Hill

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Michael B. Hill is a partner at Sheppard Law Firm. Michael is a Florida Board Certified Will, Trusts & Estates attorney concentrating his practice in estate and wealth preservation and business succession planning.



Michael has extensive tax, legal and technology skills, enabling him to create unique plans for meeting client's individual and family needs.

Michael is a double graduate of the University of Florida, receiving his Bachelor of Science in Accounting in 1998, and his Juris Doctor, with honors, in 2001. He is a member of the Florida Bar Association, the American Bar Association, and the Lee County Bar Association.

Michael and his wife, Jamie, have four children, Connor, Chase, Lindsay, and Caleb. In his free time, when there is any, Michael enjoys playing golf, working out, and watching most Gator sports. As an alumnus of the Fightin' Gator Marching Band, you may be able to spot him on Florida Field as a member of the Alumni Band, which marches at one home football game each year.

Hayley E. Donaldson

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Hayley E. Donaldson has been recently promoted to partner with the Sheppard Law Firm, working closely with estate planning attorneys Craig R. Hersch and Michael B. Hill.



Hayley helps guide family members in the trust administration and probate process after the passing of their loved one.

Additionally, she assists clients with their tax and estate planning, drafting simple and complex wills, trusts, and related estate planning documents.

Hayley received her Juris Doctor from the University of Florida Levin College of Law, graduating first in her class. In law school she was a member of the Florida Law Review and Volunteer Income Tax Assistance (VITA) program which assists lower income individuals with their yearly tax returns.

Hayley is also a Certified Public Accountant (CPA) and worked previously as an Internal Audit Consultant for a national firm. Hayley has a Masters in Professional Accounting from the University of Texas and holds degrees in Accounting and Finance from the University of Miami. Raised in Fort Myers, she is also a proud graduate of the International Baccalaureate program at Fort Myers High School.

In her free time, Hayley enjoys running, swimming, and watching the Boston Red Sox.

Andrew H. Barnett

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Andrew is an associate of Sheppard Law Firm, works closely with estate planning attorneys Craig R. Hersch and Michael B. Hill. Andrew assists clients with their tax and estate planning, drafting simple and complex wills, trusts, and related estate planning documents.



Andrew holds Bachelor of Science from Virginia Commonwealth University and Juris Doctor degree from the St. Thomas University School of Law. His non-legal experiences includes work in the real estate industry as a licensed Realtor and appraiser.

Andrew also worked as a regulator analyst for Dominion Energy where he administered contracts that connected generating facilities to the electric system.

Andrew served as an Assistant State Attorney in southwest Florida before transitioning into a general trial practice concentrating on civil litigation and personal injury lawsuits.

Andrew is a member of the Florida Bar Association, and is also admitted to practice in the U.S. District Court, Middle District of Florida.

Andrew is married to Jennifer, who practices criminal law in southwest Florida. In his spare time, Andrew enjoys exercising, fishing, home improvement projects, and spending time with his family.

