

## ESTATE PLANNING CLIENT ADVISORY

### Winter 2021-2022

The Law Office of Robert H. Eardley, P.A. is pleased to provide this *Estate Planning Client Advisory*.

**Tax Updates & the Build Back Better Act:** In recent days, the Biden administration and Congressional Democrats have advanced a “progressive” agenda to significantly increase personal, business and estate taxes. However, much of the administration’s current tax agenda has been pared down in an effort to curry Congressional votes. Below we provide a summary of some of the most relevant components of the Biden tax agenda as well as changes slated for 2022.

1. **The Infrastructure Act.** On November 15<sup>th</sup>, President Biden signed into law the \$1.2 trillion “*Infrastructure Investment and Jobs Act.*” The Act includes \$550 billion for roads, bridges and water services but incorporates few taxes.



2. **The Build Back Better Act.** Along a largely party-line vote in late August, the House passed a \$3.5 trillion resolution which was released in summary format on September 15<sup>th</sup>. After significant public scrutiny, a slimmed down version of the Act narrowly passed in the House on November 19<sup>th</sup> and is now before the Senate with more changes expected.

The September version of the Act contained worrisome expansions to the estate, gift and income tax regimes, including (a) cutting the exemptions in half, and (b) imposing income tax on traditionally non-taxable intra-family trust transactions. Interestingly, in an effort to gain votes, Democrats pulled the more troublesome provisions from the November version.

The current version also increases the state and local income tax (“SALT”) deduction from \$10,000 to \$80,000 (\$40,000 for single filers) - which disproportionately benefits the wealthy in high tax states. As Congressman Jared Golden (D-ME) (who voted against the Act) noted, “the current House version of SALT gives millionaires thousands in cash, while people who make less than about \$100,000 per year get less than \$20 on average.”

3. **Current Estate Tax Law.** The 2021 estate, gift and GST tax exemptions are \$11.70 million apiece and scheduled to drop to \$5 million each (indexed for inflation) in 2026.

4. **2022 Exemptions Increased to \$12.06 Million.** The baseline exemptions are adjusted annually for inflation. For gifts and deaths occurring on or after January 1, 2022, the exemptions increase from \$11.70 million to \$12.06 million.

5. **Annual Tax-Free Gifting Amount Increased to \$16,000.** The baseline tax-free gifting amount is \$10,000 and is adjusted periodically in increments of \$1,000. For 2022 gifts, the tax-free amount increases by \$1,000 to \$16,000.

**IRA Legislation & Updates:** An important benefit for IRA owners is closer to enactment. Two similar bipartisan bills, one in the House and one in the Senate, seek to provide “retirement security.” Although not identical, their common convergence appears to be (a) raising the RMD age from 72 to 75 by 2032, and (b) carving out an RMD exception for those with less than \$100,000 in IRA funds. Although IRA reform has broad bipartisan support, current legislative matters have temporarily sidelined this legislation.

While the 2019 SECURE Act increased the IRA RMD age to 72, it left in place the tax rule which allows taxpayers age 70½ and older to transfer up to \$100,000 directly from an IRA to charity without reporting this on the tax return. This direct giving saves taxes compared to withdrawing IRA funds and then giving the funds to charity. The savings results from avoiding deduction limits on charitable donations and Medicare premium surcharges.

**The Battle Over Tim Conway’s Health Care:** Baby boomers and those more senior have great memories of comedian Tim Conway’s hysterical performances on *The Carol Burnett Show*. Mr. Conway, who died in 2019 at age 85, won 4 Emmys for *The Carol Burnett Show* and, before that, starred in *McHale’s Navy*. And now Mr. Conway’s daughter, Kelly Conway, has written a memoir due out December 30<sup>th</sup> entitled *My Dad’s Funnier than Your Dad: Growing Up with Tim Conway in the Funniest House of America* - which has reopened to public view the family’s turmoil at the end of Mr. Conway’s life.

Unfortunately, the memoir reveals the all too common struggle for who will have control of a “declining” loved one - especially in the blended family context. Before Mr. Conway’s death, Kelly Conway and Mr. Conway’s second wife of 35 years (Kelly’s stepmother), Charlene Conway, engaged in a legal battle over control of Mr. Conway, who was suffering from a dementia-like condition.



According to Kelly Conway, “sometimes the stepparents can cause problems. In my situation, it was my stepmom. She didn’t want me to see my dad and I still don’t know why...I just wanted him to be at home where he was comfortable and happy in a familiar environment... [t]hose were not the decisions she was making...”

However, the court saw matters differently and appointed Charlene as Mr. Conway's Guardian. It found "clear and convincing evidence" that a guardianship was necessary, that Charlene was "suitable and qualified," and that Mr. Conway, though of diminished ability, consented to her appointment.

**PLANNING POINTER:** *If there is a significant likelihood that family members may legally contest the authority of the Power of Attorney or Health Care Surrogate, it is advisable that a Florida "Preneed Guardian" instrument be implemented to circumvent that concern. By this instrument one designates a Guardian to act if determined judicially to be incompetent. Although not absolutely binding on the court, the named Guardian generally is permitted to serve unless deemed "unqualified" by the court.*

**Buying A New Home – Remember Property Tax Exemption Portability:** In 1992, Florida enacted the *Save Our Homes* ("SOH") law, which caps property tax assessment increases on a homestead to 3% annually regardless of market value. The tax savings resulting from the difference between market and assessed value is the "SOH Benefit."

Subsequently, the legislature enhanced the SOH benefit by enacting *Homestead Exemption Portability* ("HEP"). Under HEP, a homeowner can transfer (or "port") up to \$500,000 of SOH Benefit on the current home to a new home. For those moving into a more expensive home, HEP offers an annual property tax savings of up to \$8,000 (depending on the county).

**SOH BENEFIT PLANNING POINTS:**

- The original home does not need to be sold to transfer the SOH Benefit to a new home.
- Application for HEP is made when filing for homestead exemption on a new home.
- Beware - after the sale of the first home you must own another home and file for HEP within 2 years.

**EXAMPLE:** *After retiring from a prosperous insurance career, Ward and June Cleaver bought a Florida home for \$300,000. Its market value is now \$750,000 but its tax value is only \$350,000 due to SOH. The Cleaver's SOH Benefit is \$400,000 (\$750,000 minus \$350,000). If the Cleavers purchase a new home for \$1 million, they may transfer their \$400,000 SOH Benefit to the new home, resulting in the new home having a taxable value of only \$600,000.*

**Review Safe Deposit Box Ownership – Avoid Access Complications After Death:** Many lease safe deposit boxes - whether storing legal documents or jewelry and valuables. In either case, accessing a safe deposit box after a loved one's death presents obstacles which should be addressed in advance.

The most problematic situation is when the deceased is the sole owner of the box. In this case, the only people who may access the box are the executor, the spouse or a child of the deceased. Importantly, a Power of Attorney cannot access the box. Further, the "family representative" may only remove: (a) the Will, (b) burial instructions/plot deeds, and (c) insurance policies -



and a bank officer must be present. All other items must remain in the box until a court probate is opened. If an executor is appointed, he may remove all contents but within 10 days must file with the probate court an inventory of the box.

Fortunately, there are at least 2 easy options to address these difficulties:

- Add a spouse or child as a co-owner of the box. In this case, the spouse or child may access the box and remove all contents after death.
- Have the box owned by a Revocable Trust. In this situation, the successor trustee (likely the spouse or child) may access the box at any time and remove its contents.

**PLANNING POINTER:** *If you have a safe deposit box, consider whether it serves an important purpose and, if not, close out the box.*

**Funeral and Memorial Pre-Planning:** Many rightly go to great lengths to ensure estate and tax plans are in order. However, planning for funeral and final affairs is equally important. We suggest the following:

- Do not use a Will as the source of funeral wishes because, by the time the lawyer is contacted and the Will read, family members already will have made many decisions.
- Prepare a separate document which sets forth comprehensive funeral plans and wishes and disseminate this to the family.
- Discuss wishes and plans with loved ones in advance. This discussion can simply be a 15-minute talk over a cup of coffee - but should cover all major issues. This "from the horse's mouth" explanation can greatly reduce family anxiety and indecision when the time comes.
- Consider funeral prepayment. This allows for arrangements tailored to particular desires and budgets and spares family the burden of making these decisions at an already difficult time.

• Utilize veteran's benefits. Honorably discharged veterans are entitled to free burial at more than 150 National Cemeteries. This benefit includes the gravesite, headstone, a burial flag and other items. For details see [www.cem.va.gov](http://www.cem.va.gov).



**Words of Wisdom:** *Now I would remind you, brothers, of the gospel I preached to you, which you received, in which you stand, and by which you are being saved, if you hold fast to the word I preached to you—unless you believed in vain. For I delivered to you as of first importance what I also received: that Christ died for our sins in accordance with the Scriptures, that he was buried, that he was raised on the third day in accordance with the Scriptures, and that he appeared to Cephas, then to the twelve. Then he appeared to more than five hundred brothers at one time, most of whom are still alive, though some have fallen asleep. Then he appeared to James, then to all the apostles. Last of all, as to one untimely born, he appeared also to me. 1 Corinthians 15:1-8.*

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