

ESTATE PLANNING CLIENT ADVISORY

Spring 2022

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

Developing Tax Topics & Updates: Below we provide a summary of some of the most relevant federal tax matters of the day as well as changes we expect to see in the near future.

1. The Build Back Better Act - Round 3? In late 2021, the Biden administration and Congressional Democrats pushed forward *The Build Back Better Act*. Along a largely party-line vote in August, the House passed a \$3.5 trillion resolution, and then in November passed a slimmed down version of the *Act*. By December, the *Act* was seemingly left on life-support when Senator Joe Manchin (D-WV) withheld his backing. Although the first version of the *Act* contained worrisome expansions to the estate, gift and income tax regimes, the November version excluded many of these provisions.



President Biden has recently sought to resurrect the *Act* by dropping its name and recasting its policies as anti-inflation measures. As of this writing, Senate Democrats are holding hearings on a variety of issues, such as prescription pricing, to keep the *Act* moving forward. No Republicans support the *Act* and Democrats ostensibly seek to tweak the *Act* to ensure Manchin's support.

According to a major news outlet, in March "*Manchin indicated that there were provisions he'd potentially be open to — including reducing prescription drug prices, reforming the tax code, and addressing climate policy — but there's no explicit agreement yet about what a plan could look like.*"

From an estate tax perspective, taxpayers have been given a temporary reprieve from drastic tax changes.

2. Biden's Billionaire Tax. On March 28th, the White House proposed a minimum tax on those with a net worth in excess of \$100 million. The proposal would impose a 20% minimum tax on total income and, most notably, the tax would apply to unrealized capital gains.

One major challenge of the proposal is that it would require the annual revaluation of farms, residences and privately-held businesses which do not have readily accessible market values. Also, some tax experts see the tax as unconstitutional.

Think the tax will not affect you? If history is any lesson, once a tax is implemented its scope always broadens to the middle class. For example, in 1969 Congress enacted the Alternative Minimum Tax ("AMT") to tax a mere 155 individuals earning over \$200,000. By 2017 more than 5 million Americans paid AMT (now temporarily much fewer due to Trump's 2017 Tax Act which expires in 2026).

3. Current Estate Tax Law. The 2022 estate, gift and GST tax exemptions are \$12.06 million apiece and scheduled to drop to \$5 million each (indexed for inflation) in 2026.

4. IRA Benefits on the Horizon. In 2019, Congress passed the *SECURE Act* to give IRA owners enhanced savings benefits. Now *SECURE 2.0* has cleared the House with solid bipartisan support.

The standout feature of *SECURE 2.0* is its increase of the RMD age, which bumps to 73 next year, then 74 in 2030, and finally 75 in 2033. The *Act* also implements a number of features to allow middle-aged workers to move more funds into their retirement accounts.

One prominent tax journal notes that the odds of the bill becoming law are "[v]ery good. But the key question is when..." Early fall seems to be the common forecast.

Caution – Deed Scams: Proper estate planning commonly includes deeding real estate into an ownership position (such as a Revocable Trust) which avoids probate. Upon recording the Deed with the County Clerk, a PDF is available on the county property appraiser's website with free viewing and printing.

However, according to *Deeds.com*, "[a]cross the United States, official-looking letters are convincing homeowners to pay for documents to certify the obvious — that they own their homes." The most recent scammer is subtly titled Records Recovery Services, which bills \$87 for a copy of one's deed. According to *Deeds.com*, "*Records Recovery Services is not traceable to a registered company; it's just a P.O. box.*"



PLANNING POINTER: While the small print in these solicitations clarifies that the organization is not a government agency, its correspondence clearly is meant to confuse. If you recently bought a new home, transferred property to your Trust, or refinanced, please be particularly vigilant for this scam.

2022 Naples Daily News Article: The Sunday March 6th edition of the *Naples Daily News* featured an article Robert authored entitled *Avoiding Probate and Court Guardianship – The Revocable Trust*. The article explains the various benefits and uses of a Revocable Trust. The article also addresses the creation and proper “funding” of the Trust, the parties involved, relevant tax issues and other matters. For a complimentary print copy or PDF, please contact Julie Yamin at (239) 216-1819 or julie@swflorida-law.com.

Snowbird State Tax Updates: Many states have massive debt issues yet continue policies which exacerbate these problems – while some states are getting on the tax cutting bandwagon. As emphasized in prior *Estate Planning Client Advisories*, Florida residents with a seasonal home in a northern state must vigilantly monitor their Florida tax residency status.

A recent op-ed piece in *The Wall Street Journal* noted that “in the 50 states there is a dramatic increase in tax competition to provide the best government at the lowest cost [since states with lower taxes attract]...jobs and investment.” In particular, the article noted 3 pivotal reasons for tax migration: (1) employees have learned during COVID that they can work for an employer in a high tax state from home in a low or no tax state, (2) due to the 2017 SALT deduction limits, states with high income and property taxes “no longer have the cost of their high-tax policies hidden and subsidized by federal income taxes,” and (3) taxpayers have discovered that high tax states do not provide improved roads, bridges, education or other governmental services.

The following is a brief survey of noteworthy state and local issues unfolding across the country.

1. Red State Developments.

- Eight states have no income tax and 2 more are slated to go to 0 (New Hampshire and Louisiana).
- Ten more states are working toward 0 income tax. For example, North Carolina’s prior 7.75% rate has been lowered to 4.99% and will further decrease to 3.99% by 2027, and Iowa recently voted to reduce its 8.53% top rate to a 3.9% flat tax beginning in 2026.

2. Blue State Developments.

- Last year Illinois lost 1 House seat and, according to *The Wall Street Journal*, Democrats blame residents moving south. However, the article notes that a significant part of the problem is the “brain drain” by college graduates who take jobs in other states. Perhaps this migration is motivated in part by each household’s \$110,000 obligation for state government retirement commitments.
- Last year, New York Governor Andrew Cuomo raised the top rate to 10.9% which, in addition to New York City’s top rate of 3.88%, made it the highest combined tax rate in the US. Then earlier this year New York’s new Governor, Kathy Hochul, piggy-backed that increase with a vow not to raise taxes. However, in early April she approved a budget “larded with union and corporate welfare” according to *The Wall Street Journal*. This included a \$600 million earmark for union work to help her hometown football team, the Buffalo Bills, build a new stadium. As the op-ed piece noted, “[i]t was blissful, for a season, to imagine that [she] might be a moderating influence in Albany...Ms. Hochul is Andrew Cuomo without the self-restraint.”

Then to add insult to injury, Lieutenant Governor Brian Benjamin resigned on April 12th after being arrested in a bribery and coverup scheme.

3. Chicago & Los Angeles.

- Chicago hosted the 114th Chicago Auto Show at the 1 million square foot McCormick Place convention center. Among the vendors was a “carjacking booth” sponsored by the Cook County Sheriff to “warn attendees of the deadly dangers presented by the current wave of carjackings...” In the same article, *The Wall Street Journal* reported that Chicago recently announced the installation of “bleeding control kits” in nearly 300 public facilities to assist those who are “shot, stabbed or beaten.”
- Los Angeles County’s top union lifeguard earns \$392,000 in pay and benefits while Florida’s top lifeguard squeaks by on \$118,000.

Is Jointly Owned Property With An Heir A Good Idea?: Clients often approach us with a desire to transfer their property into joint ownership with an heir to avoid probate. Although joint ownership certainly avoids probate, generally it is not advisable for several important reasons.

First, if the heir experiences a divorce, the spouse may be able to obtain an ownership interest in the property as part of the divorce settlement. Second, if the property is later sold and it is your home, a portion of the \$250,000 capital gains exclusion may be forfeited. Third, if a mortgage exists on the property, the transfer to joint ownership may incur a significant county documentary stamp tax. Fourth, the entire value of the property will still be included in the estate for estate tax purposes.

In summary, viable options for probate avoidance exist, but joint ownership of a property with a non-spouse is not one of them.

Words of Wisdom: *For God so loved the world, that he gave his only Son, that whoever believes in him should not perish but have eternal life. For God did not send his Son into the world to condemn the world, but in order that the world might be saved through him. Whoever believes in him is not condemned, but whoever does not believe is condemned already, because he has not believed in the name of the only Son of God. And this is the judgment: the light has come into the world, and people loved the darkness rather than the light because their works were evil. For everyone who does wicked things hates the light and does not come to the light, lest his works should be exposed. But whoever does what is true comes to the light, so that it may be clearly seen that his works have been carried out in God.* John 3:16-21.

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