

## WILLS, TRUSTS & ESTATES: PLAIN & SIMPLE

# “The American Families Plan: Disguising an Estate Tax?”

President Biden’s proposed changes to the Internal Revenue Code, known as the American Families Plan, was unveiled at the end of April 2021. These changes are intended to accomplish three goals: (1) fund the government’s efforts against the pandemic, (2) support new social programs, (3) enable tax cuts for lower-income families. The measures aim to ensure that the wealthiest Americans pay their “share” in taxes.

While the President’s plan in this “go around” does not specifically address estate taxes, it does propose a tax upon an individual’s estate at death in the form of a capital gains tax. Currently, when an individual dies, the income tax basis of the decedent’s assets is “stepped up” to the value of the asset on the date of death, effectively allowing any appreciation on those assets since purchase to escape income taxation. The President’s plan posits that this escape from capital gains tax allows the wealthiest Americans to escape tax on their wealth by passing it down to their heirs, thereby exacerbating inequality.

The President’s plan not only ends the “step-up” in basis at death on appreciation in property owned by a decedent in excess of \$1 million it also imposes a capital gains tax on such appreciation exceeding \$1 million at the time of death. That is, such appreciation will be taxed as if the property had been sold at death unless the property is donated to charity. (Note that the \$250,000 personal residence exemption would still be available as well). With a view to protecting family-owned businesses, this deemed sale would not apply if the family business is passed down to the owner’s heirs, provided the heirs continue to run the business.

Whether and how these new rules will be enacted and applied is yet to be seen, as the changes are merely proposed at this point. This doesn’t mean that an increase in estate tax rates and the lowering of the estate tax exemption is off the table. The exemption is already set to automatically reduce to \$5 million indexed for inflation as of January 1, 2026, if it is not reduced sooner (perhaps, after the 2022 mid-term elections). One may wonder whether charitable remainder trusts will make a big comeback. More on that in the future.

If there is a trust & estates topic that you would like to know more about, please feel free to email me at [patricia.marcin@rivkin.com](mailto:patricia.marcin@rivkin.com) and I will do my best to cover it in a future column.

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