

## Estate Tax Surprises and Traps in Bidens 2022 Budget

PUBLISHED ON

**August 11, 2021**

---

The Biden administration's proposed 2022 budget and tax proposals are far from final, however, the proposal should still prompt all clients to review their existing estate plans with their estate planning professionals in the next few months. For months reports suggested that the current federal estate and gift tax exemption would be reduced to between \$3.5 million and \$5 million from the current exemption of approximately \$11.7 million. Curiously, no decrease in the federal exemption or increases in the federal estate and gift tax rates are proposed. While this proposal could certainly change ([in part to fund infrastructure and other recent proposals](#)), the current proposal does not contain the anticipated decrease in the federal estate and gift tax exemption. Importantly, as of December 31, 2025, the current law sunsets and the exemption will be automatically decreased by approximately 50%.

Although the proposal does not reduce the estate and gift tax exemption levels, there are still significant proposed changes to the income tax consequences of making gifts of appreciated property and dying with appreciated property. Under current law, individuals receive a stepped-up income tax basis to current fair market value for all assets owned by them at the time of their death. Further, under current law, assets may be gifted in-kind at death (or during lifetime) without incurring capital gains.

The Biden administration's proposal changes this long-existing law by causing capital gains tax to be incurred by making gifts of appreciated property during lifetime into an irrevocable trust or by gifting appreciated assets at death. While there are certain exclusions (\$1 million per person plus \$250,000 for a personal residence), now is the time for clients to consider the capital gain implications of the current proposal.

It is impossible to predict how many, if any, of the Biden administration's proposed 2022 budget and tax proposals will be enacted into law. However, one way or another, revenues will need to be raised to pay for infrastructure and other proposed programs.

If you have any questions about these tax proposals and how it could affect your personal situation, please contact [Michael Mixell](#), [Alex Puskar](#) or anyone in the [Barley Snyder Trusts & Estates Practice Group](#).

:

---



**Michael L. Mixell**

Counsel

Tel: (610) 898-7159

Email: [mmixell@barley.com](mailto:mmixell@barley.com)



**Alexander Puskar**

Partner

Tel: (717) 399-4152

Email: [apuskar@barley.com](mailto:apuskar@barley.com)