House Tax Bill: What You Need To Know

Legal Alert

September 17, 2021

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The House of Representatives Joint Committee on Taxation released its highly anticipated synopsis of the colloquial "tax bill." Bill JCX-43-21 is the latest piece of legislation in a flurry of recent legislative activity aimed at federal tax increases for high-income and high-net-worth individuals. The proposed reforms were summarized in a document released on September 13, 2021, by the Staff of the House Joint Committee on Taxation and slated for review by the House Committee on Ways and Means on September 14, 2021. The proposed tax bill has significant implications and casts a wide net. The following information is a high level overview of the measures most likely to impact high-income and/or high-net-worth individual taxpayers, if enacted:

- While not raised as much as previously anticipated, the capital gains tax rate is proposed to increase from 20% to 25%, effective for all sales and transactions closing after September 13, 2021. However, all binding contracts entered into before September 13, 2021 that close after that date will be taxed at the 20% rate.
- Certain high-income taxpayers will be subject to the net investment income tax, also known as the 3.8% Medicare tax, regardless of whether the taxpayer materially participates in the trade or business, where the net income or net gain from the trade or business is not otherwise subject to the Federal Insurance Contributions Act (FICA) or the Self-Employed Contributions Act (SECA) tax in the hands of the taxpayer. If enacted, this change will impact S corporation shareholders, limited partners and LLC members who are currently not liable for the FICA or the SECA tax on their pro rata distributive shares and partnership income and gain will become subject to the 3.8% Medicare tax on this income and gain over certain thresholds. If adopted, this provision goes into effect beginning January 1, 2022.
- A 3% surtax will be imposed on modified adjusted gross incomes over $5 million for single individuals, heads of household, married individuals filing jointly, and surviving spouses. This rule would be effective on January 1, 2022. For married individuals filing separate returns, the 3% tax applies to modified adjusted gross income in excess of $2.5 million. For estates or trusts, the 3% tax applies to modified adjusted gross income that exceeds $100,000. If adopted, this provision would go into effect beginning on January 1, 2022.
- A $10 million applicable dollar limit would be established with respect to aggregate accumulations for wealthy taxpayers' retirement accounts. This means that when a taxpayer meets the income criteria established in the tax bill, no annual additions may be made by that taxpayer to any IRA or it will be subject to an excise tax for excess contributions. Additionally, increased required minimum distributions (RMDs) will be required to be made by these wealthy taxpayers whose retirement account balances exceed $10 million, adjusted for inflation. If adopted, these provisions would go into effect beginning on January 1, 2022.
- For estate and gift tax purposes, the use of valuation discounts in valuing certain transfers of non-business assets would no longer be allowed. If adopted, this provision would go into effect on the date enacted.

- There are no changes to the state and local tax (SALT) deduction limits imposed by the Tax Cuts and Jobs Act of 2017.
- In this proposal, grantor trusts will be included in the grantor's estate and distributions from such trusts will be treated as taxable gifts. If adopted, this provision shall be imposed on all trusts created and contributions made to grantor trusts beginning on the date of enactment.
- Sales to intentionally defective grantor trusts (IDGTs) will be eliminated. As a result, a transfer to an IDGT may result in the realization and recognition of gain. If adopted, this provision will go into effect the date enacted.
- The previously announced reduction of the estate and gift tax exemption has been accelerated to January 1, 2022. Under this proposal, the basic exclusion amount is estimated to be reduced for each individual to $6,020,000 for 2022 from $11,700,000 in 2021. This proposed change does not affect married taxpayers' ability to make portability elections, which allows them to take full advantage of both spouses' exemptions.
- Importantly, like-kind exchanges will not be eliminated as President Biden had previously proposed.

These are just a few of the many changes proposed in the bill. While all of these proposals are subject to further modification when the bill reaches the Senate, it is prudent to start planning for them now.

Consider reviewing your estate plan with us at Flaster Greenberg PC to ensure you are prepared should any or all of the proponents of this tax bill come to fruition.

ATTORNEYS MENTIONED

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