

TAX PLANNING UNDER THE BIDEN ADMINISTRATION

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ROADMAP

- Individual Income Tax
- Transactions
- Health Care
- Corporate Tax
- Business Tax
- Real Estate
- Estate & Trust Tax
- Retirement Plans & SECURE Act 2.0
- Retroactivity

INDIVIDUAL INCOME TAX – *INDIVIDUAL RATES*

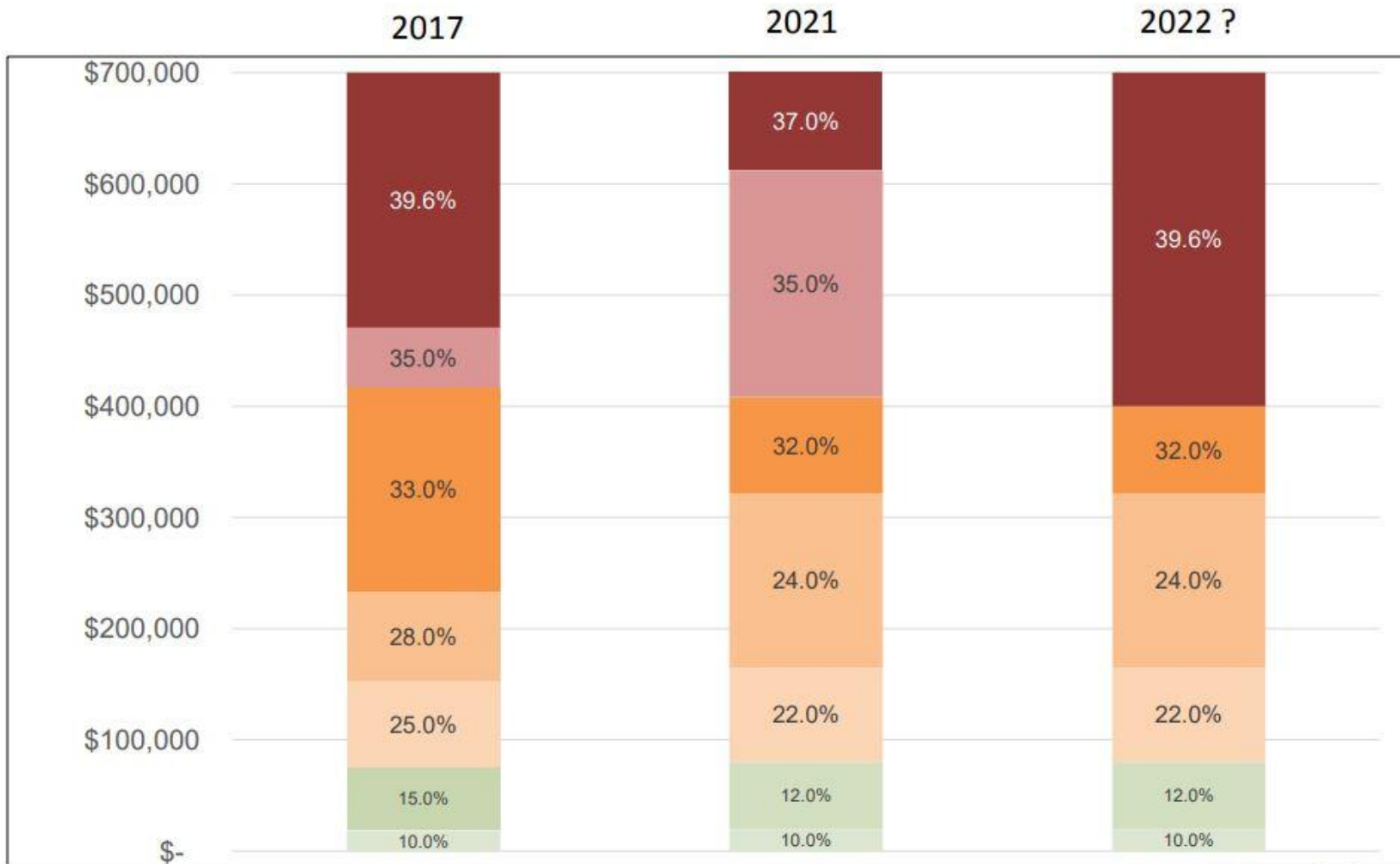
CURRENT LAW

- 7 brackets: 10%, 12%, 22%, 24%, 32%, 35%, 37% (12/31/2017 TO 1/1/2026)
- 2021: 37% applies to \$628.3K (joint) / \$523.6K (single)
- 2020: 37% applies to \$622.05K (joint) / \$518.4K (single)

PROPOSAL

- 39.6% for taxpayers making more than \$400K (restoration of pre-TCJA rate)

Married Filing Jointly



INDIVIDUAL INCOME TAX – CAPITAL GAINS

CURRENT LAW

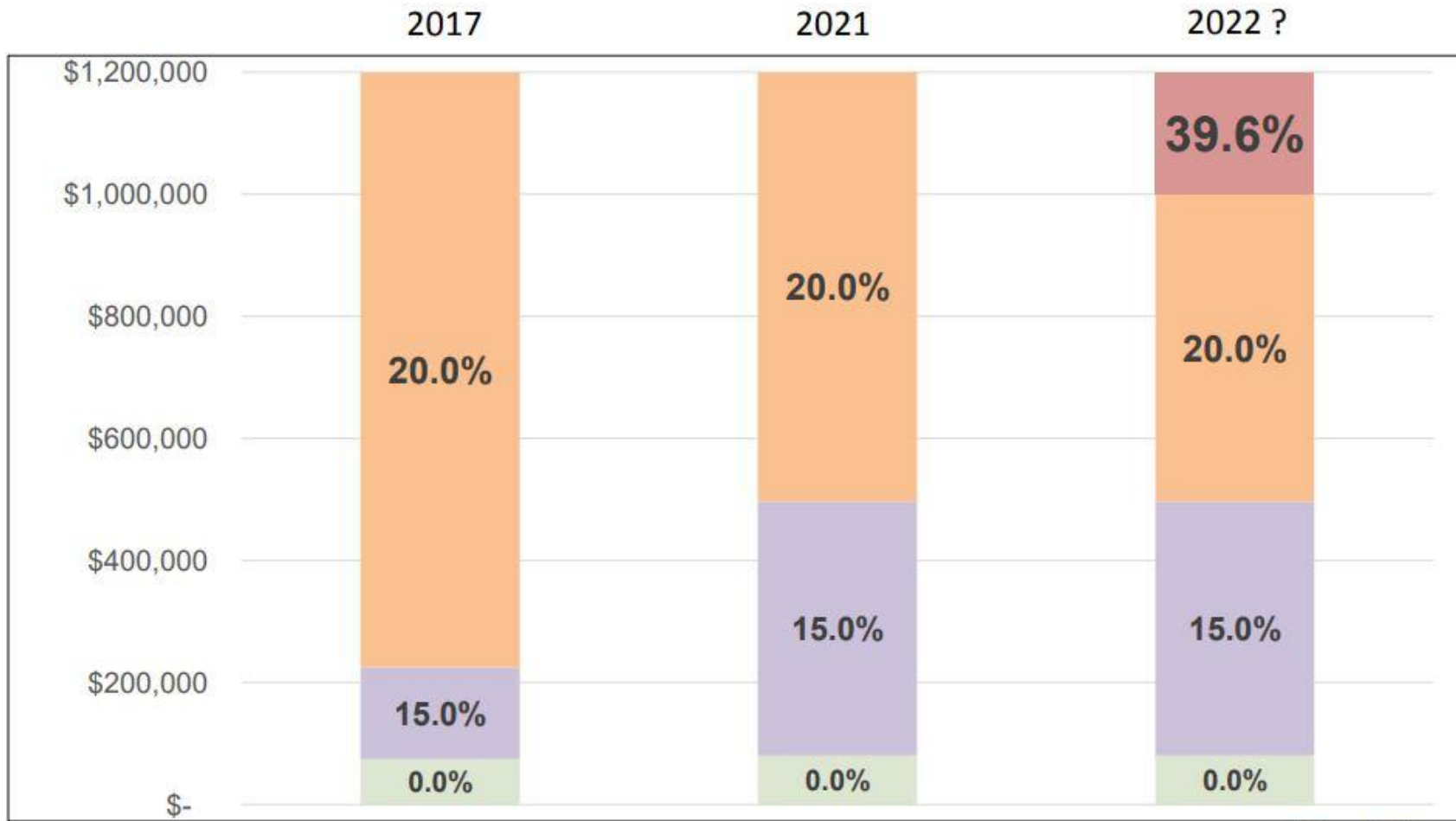
- Top rate = 20%
- Net investment income tax adds 3.8% to households earning over \$250K (joint) / \$200K (single)
- Taxpayers in 10% - 12% brackets pay 0%
- Taxpayers between 12% and top bracket pay 15%
- May elect to defer recognition of, and avoid recognition of future appreciation related to, capital gain from certain sales/exchanges of property by investing the gain in a qualified opportunity fund

PROPOSAL

- Tax at top ordinary income rate (39.6%) for taxpayers with over \$1MM income
- Eliminate basis step-up at death
- Reform opportunity zones

Married Filing Jointly

Capital Gain & Qualified Dividend Rates



INDIVIDUAL INCOME TAX - *CHILDREN*

CURRENT LAW

- Child Tax Credit: Taxpayer can claim \$2K credit for each child (under 17) and \$500 for other dependents
 - Credit is phased out at higher incomes
 - Portion of credit refundable
- Child Care: Credit up to 35% of spending on childcare to work allows up to \$1.5K for one child / \$3K for 2+ children under age 13
- EITC: Earned income tax credit is refundable personal credit available for any eligible person who has a qualifying child for the year, or any other eligible person without children who satisfies certain criteria (no taxpayers 65 or older)

INDIVIDUAL INCOME TAX - *CHILDREN*

PROPOSAL

- Child Tax Credit: For one year, raise credit to \$3K/child for children 6 to 17 years old; \$3.6K/child under 6
 - Credits fully refundable
- Child Care: One year expansion of credit to provide up to 50% credit on spending \$8K for one child, \$16K for 2+ children under age 13
 - Credit is refundable
 - 50% reimbursement available for taxpayers making less than \$125K/year
 - Taxpayers between \$125K and \$400K receive partial credit (will not get less than eligible for today)
- EITC: For one year, expand to older workers; raise minimum credit to \$1.5K; raise income limit close to \$21K; expand eligibility for younger workers

INDIVIDUAL INCOME TAX – *CREDITS* & *DEDUCTIONS*

CURRENT LAW

- Taxpayers can take eligible deductions and credits against income tax liability
- Itemized deductions for SALT capped at \$10K

PROPOSAL

- Cap itemized deductions at 28%
- Restore PEASE limitation for income above \$400K
- End SALT dollar limit / return of SALT deduction
- \$3K tax credit for family caregivers
- Expand Work Opportunity Tax Credit to include military spouses

INDIVIDUAL INCOME TAX – *STUDENT LOANS*

CURRENT LAW

- ❑ Loan forgiveness included in income, unless exception applies
- ❑ Loan forgiveness included in income unless individual worked for a certain period in certain professions

PROPOSAL

- ❑ Student loans cancelled, tax-free, after borrowers have been enrolled in the income-based repayment plan for 20 years

TRANSACTIONS

CURRENT LAW

- Carried Interest: Income that flows to GP of private investment fund is taxed at the lower capital gains rates; 3 year holding period for long-term capital gain and loss for certain service-based partnership interests
- Cryptocurrency: Virtual currencies treated as property for tax purposes; reportable on Form 1040
- Transaction Tax: No tax on entering into transaction such as buying/selling stocks/bonds/derivatives

PROPOSAL

- Carried Interest: Eliminate.
- Cryptocurrency: No change.
- Transaction Tax: Implement.

HEALTH CARE

CURRENT LAW

- ❑ Tax credits available to lower income taxpayers to assist paying premiums for purchasing health insurance through an exchange (under the ACA)
- ❑ Long-term care insurance premiums are eligible medical care expenses for purposes of medical deduction

PROPOSAL

- ❑ Eliminate income cap on tax credit eligibility for the premium tax credit to allow all taxpayers purchasing health insurance through an exchange to claim the credit
- ❑ Base tax credits on gold plan
- ❑ Tax penalty on drug manufacturers that increase the costs of their brand/biotech or abusively price generic drugs
- ❑ Terminate pharmaceutical corporations' tax deduction for advertisement spending
- ❑ Create \$5K credit for using informal caregivers (e.g., family members)
- ❑ Increase tax benefits for older taxpayers who buy long-term care insurance using their retirement savings
- ❑ Expand access to refundable health care premium tax credits so no family spends over 8.5% of their income on health insurance

CORPORATE TAX - *RATES*

CURRENT LAW

- 21%

PROPOSAL

- 28% with 15% minimum book tax on companies reporting more than \$100MM in U.S. but paid \$0 (or negative) federal income taxes
 - Credit for foreign taxes paid and carryovers allowed
- 10% offshore penalty surtax on the profits from any production by a U.S. company overseas for sale on American soil, making overall tax rate on those profits 30.8%

CORPORATE TAX - CREDITS

CURRENT LAW

- Nonrefundable tax credit for portion of wages paid to certain new employees who qualify as members of disadvantaged groups

PROPOSAL

- Childcare construction tax credit for businesses building childcare facilities at places of work
 - Employers receive 50% of the first \$1MM of construction costs per facility
- 10% “Made in America” tax credit for companies creating jobs for American workers
 - Available for revitalizing closed or nearly closed facilities, retooling or expanding facilities, and bringing production or service jobs back to U.S. and creating U.S. jobs
 - Applies when company increases manufacturing wages above the pre-COVID baseline for jobs paying up to \$100K

BUSINESS TAX

CURRENT LAW

- QBI: Taxpayers other than C corps can deduct 20% of qualified business income from a partnership, S corp, or sole proprietorship, as well as 20% of qualified REIT dividends and qualified publicly traded partnership income (§ 199A)
- Manufacturing: Repealed for tax years after 12/31/2017, businesses were entitled to 9% deduction for domestic production activities

PROPOSAL

- QBI: End special qualifying rules, including those for real estate investors; only allow deduction to taxpayers making \leq \$400K
- Manufacturing: Manufacturing communities tax credit; 10% penalty on companies moving operations overseas

REAL ESTATE

CURRENT LAW

- ❑ Taxes on gains of real property are deferred if property is exchanged for that of “like-kind” (§ 1031 exchange)
- ❑ Owners of residential rental property occupied by low-income tenants may claim a tax credit of a % of the qualified basis of the property over a 10-year period

PROPOSAL

- ❑ Roll “back unproductive and unequal tax breaks for real estate investors with incomes over \$400K”
- ❑ End QBI deduction for real estate investors
- ❑ Possible end to like-kind exchanges
- ❑ Investors cannot use real estate losses to lower income tax
- ❑ New, refundable tax credit up to \$15K to assist first time home buyers (paid upon purchase)
- ❑ Neighborhood Home Credit: tax credit to renovate distressed properties in distressed communities (as part of general business credit)
- ❑ Implement renter’s tax credit

ESTATE & GIFT TAX

CURRENT LAW

- Exemption: \$11.7MM for 2021 (scheduled to reduce to \$5MM, adjusted for inflation, 12/31/2025); top rate of 40%*
- Assets passed at death get basis step-up to FMV as of DOD

PROPOSAL

- Exemption: \$3.5MM (adjusted for inflation); top rate of 45%**
- Eliminate basis step-up that allows people to pass capital gains to heirs without tax after death

*potential “use it or lose it opportunity,” with claw back unlikely

**unclear whether income tax deduction for estate tax paid (or vice versa)

RETIREMENT PLANS - *INCENTIVES*

CURRENT LAW

- Eligible employees can contribute portion of salary to qualified retirement plan
- Deferred salary not included in taxable income until withdrawn
- Penalties apply for early withdrawal
- Not all employers offer qualified retirement plans
- Minimum distributions required at age 72

PROPOSAL

- “Automatic 401(k)” for workers without access to pension or 401(k) plan
- Hardship (penalty free) withdrawals for survivors of domestic violence or sexual assault
- Equalize tax benefits of defined contribution plans across income scale
- Tax credit (instead of deduction) caps the tax benefit for deferred salary
- Allow caregivers to make “catch-up” contributions to retirement accounts, even if not earning income in formal labor market
- Tax credits for small businesses to offset some cost of starting or maintaining retirement plans

SECURE ACT

CURRENT

- Effective 1/1/2020
- RMD age extended to 72
- If beneficiary over 70.5 is still contributing to IRA, contributions reduce \$100K ceiling for qualified charitable distributions (QCDs)
- Eliminates stretch IRA for most inherited accounts, requiring 10-year payout with no annual withdrawal requirement
- 10-year rule does not apply to: surviving spouses, minor children (but not grandchildren!), disabled or chronically ill beneficiaries; and beneficiaries who inherited accounts from owners who died prior to 1/1/2020
- No one-size fits all approach to new rules

SECURE Act RMD Chart

| | Outright | Conduit Trust | Designated Bene. Trust | Non-Designated Bene. Trust |
|------------------------------|--------------------------------|--------------------------------|------------------------|--|
| Non-Eligible Beneficiary | 10 Year Rule | 10 Year Rule | 10 Year Rule | <i>Before RBD:</i> 5 Year Rule <i>After RMD:</i> Ghost Rule |
| Surviving Spouse | Life Expectancy | Life Expectancy | 10 Year Rule | |
| Minor Child | Life Expectancy Until Majority | Life Expectancy Until Majority | 10 Year Rule | |
| Beneficiary <10 Yrs. | Life Expectancy | Life Expectancy | 10 Year Rule | |
| Disabled/ Chronically Ill | Life Expectancy | Life Expectancy | Life Expectancy | |

SECURE ACT 2.0 *AKA THE NEAL-BRADY BILL*

- New bipartisan legislation, Securing a Strong Retirement Act of 2020
- Builds on 2019 SECURE Act
- Intended to help small businesses
- Key provisions:
 - Requires new defined contribution (DC) plans to enroll participants automatically with $\geq 3\%$ contribution rate and increase rate through auto-escalation by 1% per year until it reaches 10%
 - Offers new credit to businesses with ≤ 100 employees to offset up to \$1K of employer contributions per employee, which gradually phases out over 5 years
 - Raises RMD age from 72 to 75 for DC plans and traditional IRAs
 - Exempts individuals with retirement account balances of \$100K or less from RMDs
 - Increases catch-up contribution limits to \$10K (for 401(k)s and 403(b)s) and \$5K (for SIMPLE plans) for those age 60+ (up from \$6.5K and \$3K)
 - Allows 403(b) plans to invest in collective investment trusts (CITs), which can reduce costs

RETROACTIVITY

- Congress may have ability to enact retroactive tax legislation
- Retroactive taxation of transactions possible if rationally related to a legitimate legislative purpose. See *Pension Benefit Guaranty Corporation v. R. A. Gray & Co.*, 467 U.S. 717 (1984); *U.S. v. Carlton*, 512 U.S. 26 (1994)

QUESTIONS?

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