

THE CLOCK IS TICKING

Two Bills Recently Introduced in the Senate Set a Tax-Increase Time Bomb for Wealthy Families



Time may be quickly running out for affluent clients to make use of many current estate planning techniques and take advantage of current estate, gift, and income tax laws. Two bills introduced by Senate Democrats at the end of March 2021 provide a glimpse of potential transfer tax increases that may soon explode on wealthy families, if enacted.

Senator Bernie Sanders (D-VT) has introduced the **For the 99.5% Act** ("**99.5% Act**"), key provisions of which include:

- Reduce the estate and Generation-Skipping Transfer (GST) tax exemption from \$11.7 million per person (\$23.4 million per married couple) to \$3.5 million per person (\$7 million per married couple), indexed for inflation.
- De-unify and reduce the gift tax exemption from \$11.7 million per person (\$23.4 million per married couple) to \$1 million per person (\$2 million per married couple), not indexed for inflation.
- Increase the estate and gift tax rate from 40% to 45% on the portion of a taxable estate from \$3.5 million to \$10 million, 50% from \$10 million to \$50 million, 55% from \$50 million to \$1 billion, and 65% on everything over \$1 billion.
- Limit the term for qualifying GST exempt trusts to 50 years and impose a tax on generation-skipping transfers made from such trusts after 50 years from creation or, for pre-existing trusts, from date of enactment of the 99.5% Act.
- Limit the annual gift tax exclusion with respect to certain transfers to \$10,000 per transferee with a total annual limit per transferor of \$20,000, both indexed for inflation (\$15,000 and \$30,000, respectively, for 2021).
- Eliminate marketability valuation discounts on passive assets and minority interest valuation discounts on family-controlled business entities.
- Impose a minimum term on Grantor Retained Annuity Trusts (GRATs) of 10 years and minimum remainder value (gift) of 25% of the contribution to the GRAT.
- Introduce a new Code Section, IRC § 2901, that would impose a gift tax or an estate tax on property owned by grantor trusts created after the date of enactment, or existing grantor trusts to which new transfers are made after enactment, upon termination of grantor trust status during the grantor's life or at his or her death (could effectively subject death benefits of policies owned by Irrevocable Life Insurance Trusts to estate tax upon the death of the grantor-insured).
- This proposal has a *prospective* effective date, some of the changes of which take effect as of the date of enactment of the Act itself and others on or after January 1, 2022.

Lion Street does not provide tax or legal advice. Taxpayers should seek such advice from a tax or legal professional.

Senator Chris Van Hollen (D-MD) has introduced the **Sensible Taxation and Equity Promotion Act (“STEP Act”)**, key provisions of which include:

- Introduce a new Code Section, IRC § 1261, which would treat any property transferred by gift, in trust, or upon death as sold for its fair market value to the recipient on the date of such gift, death, or transfer (excluding transfers to revocable grantor trusts), thus causing recognition of unrealized gain or loss for income tax purposes at these dates and effectively eliminating any income tax-free basis “step-up” at death under IRC § 1014 and the income tax-deferred “carryover basis” nature of certain gifts during life under IRC § 1015.
- Treat property held by grantor trusts as sold for its fair market value upon the date of the grantor’s death, or the date on which grantor trust status terminates, the property is no longer included in the grantor’s taxable estate or is distributed to someone other than the grantor, thus causing recognition of unrealized gain or loss for income tax purposes at these dates.
- Treat property held by non-grantor trusts as sold for its fair market value every 21 years from the later of the date of creation of the trust and December 31, 2005, thus causing recognition of gain or loss for income tax purposes at these dates.
- Include exceptions for transfers to one’s spouse, transfers to or for the use of a charitable organization, and tangible property other than a collectible which is not held for business or investment purposes.
- Include an exclusion for individuals during life equal to the excess of \$100,000 (inflation adjusted) over the aggregate amount excluded for all preceding taxable years; this \$100,000 excess exclusion amount is increased to \$1 million (inflation adjusted) upon death.
- Introduce a new Code Section, IRC § 6168, providing for an extension of time for payment of capital gain tax realized under new IRC § 1261 by reason of the taxpayer’s death, or every 21 years in the case of a non-grantor trusts, through a deferral for not more than 5 years and installment payments thereafter for up to 10 years (similar to IRC § 6166 for estate taxes).
- This proposal has a **retroactive** effective date of transfers made on or after January 1, 2021.

It should be noted that these bills are just in proposed status and have yet to become law as of the writing of this summary. It is possible that any final legislation may look different from what was proposed, or the bills may not get approved altogether. There also may be complexities and nuances associated with the underlying changes and additional considerations to address.

Regardless, it is imperative that affluent clients engage with their tax and legal advisors for guidance on the implications of these Acts, if enacted, plan accordingly and take advantage of any fading opportunities before the effective date of any corresponding changes. Moreover, the need for life insurance to provide liquidity at death to help pay these potentially higher estate and/or income taxes may greatly expand and clients should engage with their insurance advisors to consider available options and begin the underwriting process.

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