

Democrats Take Control of Senate – How This Could Impact Our Estate Planning and Business Clients (Tax Edition)

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On January 5, 2021, Georgia conducted two runoff elections to determine the state's two U.S. Senators. Both seats were won by Democrats, bringing the Senate to an even 50-50 split between Democrats and Republicans. Following her inauguration in about two weeks, Vice President Kamala Harris will be able to break any ties, thus giving Democrats control of the body.

This means that President Biden and the Democratic Party will have greater ease in passing many of the proposals advanced during the 2020 campaign, including several tax proposals that may impact our business and estate planning clients. The purpose of this article is to briefly identify many of these potential tax law changes that could be advanced by the Biden administration.

POTENTIAL CHANGES TO TAX POLICY UNDER A BIDEN ADMINISTRATION

- **Reducing the federal estate/gift tax exemption**
 - Under current law, the estate/gift tax exemption for 2021 is \$11.7 million for individuals and \$23.4 million for married couples.
 - Biden has proposed reducing the individual estate tax exemption to \$3.5 million (\$7 million for married couples) and the gift tax exemption to \$1 million (\$2 million for married couples)
- **Increasing the estate/gift tax rate from 40% to 45%**
 - Under current law, each dollar over an individuals' estate/gift tax exemption amount is taxed at 40%.
 - Biden's plan would increase this estate/gift tax rate to 45%.
- **Increasing income tax rate from 37% to 39.6% for individuals earning more than \$400,000**
- **Increasing corporate tax rate from 21% to 28%**
- **Imposing highest ordinary tax rate—39.6%—on capital gains after first \$1 million in income**
- **Imposing 12.4% payroll tax on individuals earning more than \$400,000**

- **Ending the “step-up” in basis for inherited assets**

- Under current law, assets that pass directly to heirs benefit from a step-up basis. This means that if the heir sells the inherited asset right away, they would pay little to no capital gains taxes.
- Biden’s proposal could either (1) eliminate the step-up in basis rule entirely, or (2) tax the asset’s unrealized appreciation upon transfer of the asset.

To reiterate, these are merely proposals that were discussed by President-elect Biden during the 2020 campaign. However, the change in Senate control will likely bring some of these proposals to fruition. The attorneys at Rembolt Ludtke will be closely monitoring for changes and will keep you continuously informed.

Please contact us if you have questions—we look forward to serving you!