

Analyzing Biden's Latest "Build Back Better" Tax Proposal

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Background

- Most recent bill text released **November 3rd**
- Current version may not be the final form, but some features will likely become law

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What's not in the bill?

- Increasing the top marginal rate from 37% to 39.6%
- Increasing the top capital gains tax rate from 20% to 25%
- Reduced Estate tax exemption
 - Also omitted = changes to grantor trusts and FLPs
- QBI Limitation
- Billionaire's tax

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Roth Conversions

- Roth conversion of *after-tax* funds in retirement accounts would be prohibited for *all* taxpayers starting **1/1/2022**
 - Eliminates backdoor Roth as a planning strategy
- Prohibits all Roth conversions for taxpayers in the highest (39.6%) ordinary income tax bracket... starting **1/1/2032**
 - 10-year window to convert pretax accounts to Roth and pay tax upfront

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Retirement Plans

- Imposes RMDs on large retirement account balances if:
 - Taxable income > \$400k (S) / \$450k (MFJ); AND
 - Combined value of IRA and defined contribution plans > \$10M
- If combined retirement account balances are between \$10M–\$20M, owner *must* distribute 50% of excess
-
- If combined retirement account balances are > \$20M, must satisfy the above 50% RMD, but first distribute the lesser of:
 - 100% of the balance above \$20M, or
 - 100% of balance in ALL Roth Accounts
- Effective **1/1/2029**

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Retirement Plans

- Prohibits Traditional and Roth IRA contributions if:
 - Taxable income > \$400k (S) / \$450k (MFJ); AND
 - Total value of IRA and defined contribution plans > \$10M.
- Limitation does *not* apply to contributions to employer plans (e.g., 401(k), SEP, pension plan)
- Effective **1/1/2029**

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Retirement Plans

- Expands statute of limitations for IRA noncompliance related to valuation-related misreporting and prohibited transactions from 3 to 6 years
- Clarifies that IRA owners are 'disqualified persons' with respect to prohibited transactions involving their own IRAs

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Retirement Plans

- Prohibits IRA owners from investing in a DISC or FSC which receives commissions or payments from another entity owned by the IRA owner

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CAP ON SALT DEDUCTION INCREASED

- \$72,500 cap for next 10 years
 - Up from \$10,000
- Retroactive for 2021

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New Surtax on (ultra) HNW

- 5% surtax on MAGI in excess of \$10MM for all individuals
 - MFS filers = \$5MM
- ADDITIONAL 3% surtax on MAGI in excess of \$25MM
 - MFS filers = \$12.5MM
- The surtax threshold for Trusts & Estates is MUCH lower at \$200k (5%) and \$500k (additional 3%)
- Watch out for clients selling large businesses or other assets!

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S-Corporations

- S-Corp profits (along w/ distributions from retirement accounts) would be considered investment income:
 - Could be subject to NIIT OR Employment taxes
 - Effective beginning in 2022
- Starts to phase in at the following MAGI levels:
 - Single/HOH = \$400k
 - MFJ/QW = \$500k

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Other Notable Provisions

- Excess business loss limitation made permanent
- Reduced limitation on Qualified Small Business Stock
- Wash sale rule applied to cryptocurrency, foreign currency transactions and commodities

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Child Tax Credit

- Extends the increased child tax credit and monthly advance payment for 2022
 - Monthly advance payments of:
 - \$250 per qualifying child age 6-17
 - \$300 per child age 0-5
 - Thresholds would change
 - Credit is fully and permanently refundable

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Child & Dependent Care Credit

- Expanded Child & Dependent care credit would **not** be extended
 - Would revert to 'old' limits in 2022
- No credit for caregiver expenses

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Health Care

- Expanded ACA Premium Tax Credit
 - Individuals who received unemployment during the year are treated as if their income was under 150% of FPL
 - I.e., they will receive the maximum credits

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Questions?

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Contact: questions@kitces.com

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