

MSBA PROBATE & TRUST LAW SECTION E-NEWSLETTER

November 2021

Call for Submissions

We are always looking for attorneys to write brief articles for this newsletter. Articles can focus on any issues relevant to probate and trust law. This newsletter is distributed to the Probate and Trust Law Section membership, which consists of approximately 1142 practitioners. Writing for the newsletter is a great way to share your knowledge and expertise with your colleagues.

If you are interested in submitting an article, please contact Kiley Henry (henry.kiley@dorsey.com) or Jenny Colich (colich.jennifer@dorsey.com) with your idea.

Please visit the Section's website for ideas and to see the various articles that have been written in the past.

Best Regards,
Kiley Henry & Jenny Colich
Probate & Trust Newsletter Editors

Upcoming Events and CLE Programs

- **Greater MN Probate & Trust Study Group Conference Call**
 - Wednesday, November 17, 2021, 9:00 a.m.; Wednesday, December 15, 2021, 9:00 a.m.
 - Call-in Number: (888) 354-0094; Passcode: 9295091072
 - Contact Bradley W. Hanson (bhanson@quinlivan.com; (320) 251-1414) with any questions or to join the group

- **MSBA Probate & Trust Law Section Council Meeting**
 - Thursday, November 18, 2021, 3:30 p.m.
 - Location: Due to Covid-19, the meeting will be held virtually
 - Contact Tram Nguyen (tnguyen@mnbars.org) with any questions or if you would like to attend the meeting virtually

- **CLEs**
 - RCBA, November 4, 2021: [PR Problems for the PR's Attorney - Legal Ethics in Probate and Trust Representations](#)
 - HCBA, November 4, 2021: [Vaccination Mandates, Concerns, and Accommodations](#)

- MSBA, November 5, 2021: [Access to Tax Justice](#)
- MSBA, November 9, 2021: [How Bias affects ADR](#)
- MSBA, November 11, 2021: [The Business Case for Diversity](#)
- HCBA, November 11, 2021: [New Lawyers Virtual Trivia](#)
- RCBA, November 17, 2021: [Happy Hour Hosted by the New Lawyers](#)
- MSBA, November 18, 2021: [New Lawyers Leadership Conference – Developing the New Lawyer as a Community Leader](#)
- MSBA, November 18, 2021: [Elder Law 1014 Series – Contested Guardianships and Conservatorships](#)
- MSBA, December 10, 2021: [One Profession – Eighth Judicial District](#)
- HCBA, December 16, 2021: [New Lawyers Virtual Trivia](#)

Tax Proposals In The New “Build Back Better” Framework

By: [The Northern Trust Institute](#)

On October 28, 2021, the Northern Trust Institute released the following article outlining President Biden’s Build Back Better framework:

Earlier today, the White House released a new framework for the Build Back Better plan, followed by a preliminary draft of the bill from the House Rules Committee.

The proposal outlines a slimmed down, yet still ambitious, spending and tax plan that the White House hopes can gain sufficient Congressional support to pass into law. At the time of writing, the plan and its specific proposals’ political pathway remains uncertain, complicated by several complex, and rapidly evolving, Congressional dynamics.

Notably, the House Rules Committee text did not include several substantial tax changes that have long been proposed to fund spending, including: lowering of gift and estate tax exemption amounts; limitations on grantor trusts; increased corporate, income and capital gain tax rates; and provisions related to IRAs and Roth IRAs. Neither was the “Billionaire Income Tax” mentioned.

Instead, draft provisions pay for new spending with investments designed to support IRS enforcement and several new taxes, including:

- A 15% minimum tax on corporations with more than \$1 billion in profits, 1% surcharge on corporate stock buybacks for public companies, and 15% global minimum tax
- An income surtax applying a 5% percent rate on modified adjusted gross income (AGI) over \$10 million, and an additional 3% on modified AGI above \$25 million. The income surtax thresholds are lower for trusts, applying a 5% surtax on modified AGI over \$200,000, and an additional 3% surtax on modified AGI over \$500,000
- An expansion of the 3.8% net investment income (NII) tax to business profits for material participants making over \$400,000, joint filers over \$500,000 and all trust and estates (regardless of income levels)

- Limitation of the qualified small business stock exclusion to 50% for most sales of QSBS after September 13, 2021
- Limitations on excess business losses of noncorporate taxpayers, including a no-carryover of disallowed losses

Our Take

We continue to advise that it is far better to plan than predict, and the political environment suggests that no tax changes should be considered “off the table.” Negotiations in Congress are ongoing, and the bill’s ultimate fate could be impacted by a wide array of factors. Congressional scorekeepers have not scored the framework, and more tax revenue than proposed may be necessary. Additionally, we have yet to see the Senate’s version of the proposal. And while the \$10,000 SALT cap was not addressed in the draft text, several Democratic lawmakers have indicated that they expect it would be in the legislation.

We do not conclude that omission of previous proposals from the framework implies that they will definitively be removed from future legislation.

Our advice continues to center on established best practices for building a plan to achieve your goals across a range of outcomes. If doing so is in line with your goals, consider utilizing your full estate tax exemption to transfer future appreciation out of your estate. This continues to be good advice, even if the exemption is not cut in half next year, as it is due to expire in 2026. Additionally, when gifting to trusts, ensure current and new trusts are drafted to reflect your goals and wishes while providing maximum flexibility. This may include naming a trust protector who may make certain changes to the trust should circumstances warrant, as well as determining that trustees have the appropriate discretion to adjust for changing circumstances.

Stay up-to-date on tax policy changes and more by visiting the Northern Trust Institute’s [Tax Policy Resource Center](#).

Click [here](#) to view this article in its entirety along with its disclosures.

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