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Joe Biden contends that the Tax Cuts and Jobs Act of 2017 (“TCJA”) changes need to be reexamined and, in many cases, repealed – replacing these changes with either the old tax requirements or newer proposals. President Trump, on the other hand, has campaigned to make the TCJA modifications a permanent change to the tax code rather than allowing them to expire in 2025.

## 2020 Election Results Could Dramatically Alter Estate Tax; Create Your Ready-to-Implement Contingency Plan

By Mary Lundstedt, Esq. & Justin Liberatore

**This deliberation is important to those that are considering making gifts and those that are in the financial position to make said gifts in order to escape the possible negative tax implications of a Biden win.** If

Joe Biden wins and the Democrats take the Senate, there is a very strong likelihood that the exemption could be retroactively reduced, effective January 1st, 2021. In order to ensure that your estate is protected from the possibility of an exemption rollback, it is vitally important for you to

create a contingency plan that would be able to be implemented as soon as possible before the close of 2020.

In the chart below, we break down the tax implications of a Joe Biden win compared to a win for President Trump.

Current Tax Law: Expires Dec 31st, 2025	President Donald Trump's Tax Plan	Joe Biden's Tax Plan
<ul style="list-style-type: none"><li>• The estate, gift and GST inflation-adjusted applicable exclusion amount for 2020 is \$11.58 million per taxpayer.</li><li>• Maintain 40% tax rate.</li><li>• Inherited assets generally receive a step-up in basis to date of death values.</li><li>• In 2026, exemptions return to \$5,000,000, adjusted for inflation (estimated to be around \$6,500,000 million in 2026).</li></ul>	<ul style="list-style-type: none"><li>• Plans to extend the current estate and gift tax laws which are set to expire after 2025.</li></ul>	<ul style="list-style-type: none"><li>• Plans to eliminate the stepped-up basis rule that permits individuals to pass capital gains to heirs without tax after death.</li><li>• Decrease exemption down to possibly as low as \$3,500,000.</li><li>• Possible tax rate increase up to 55%.</li></ul>

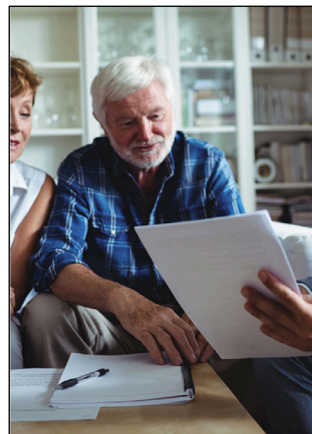
When examining these vastly different tax proposals, it is clear that there is a very real possibility that estate taxes could be significantly increased if Joe Biden and the Democratic party obtain control over Congress and the Presidency. If the tax proposals of Joe Biden are implemented and Congress makes any tax changes retroactive to January 2021, then millions of dollars of gifts could become nonexempt overnight. Decreasing the exemption from \$11.58 million to between \$5 million and \$3.5 million, the elimination of stepped-up basis, and the increase of the tax rate applicable to taxable transfers all create a much more unfavorable tax climate for high net worth individuals. Tools that can be utilized to minimize transfer taxes for those who face them based on net worth include gifting the full exempt amount (\$11.58 million) before the end of the year, potentially through the use of SLATs or dynasty trusts.

Due to the Coronavirus pandemic, the valuation of your business may have decreased as a result of falling occupancy rates, shut-downs, and lower actual or projected revenue. The side effects of the worsening economic position that we find ourselves in, coupled with the historically low-interest rates, create a favorable climate for the immediate gifting of business assets. With the decline in valuations of many American businesses, thoughtful consideration when examining your estate gifting plan combined with the expert help of estate planning attorneys can ensure that the gifts you make before 2021 will have the most effect.

While there is no guarantee that the tax changes proposed by Joe Biden will become law, those who would be impacted ought to consider a contingency plan. Frost Law estate attorneys can work with you to determine your gifting options and advise on the best strategies for you and your family.

**If you have any questions, contact our tax team at 410-862-4220 or fill out our [online form](#).**

## Additional Resources



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