

# Pending Tax Reform

## *What the Estate Planner Needs to Know*

Drafted October 4, 2021

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House Ways & Means Committee Markup:  
*The Build Back Better Act*

# 2021 Tax Reform – *Individuals*

- The 39.6% rate is restored:

	TOP OF EACH BRACKET				
	S	MFJ/QW	MFS	HOH	T&E
<b>10%</b>	\$9,950	\$19,900	\$9,950	\$14,200	<b>\$2,650</b>
<b>12%</b>	\$40,525	\$81,050	\$40,125	\$54,200	-
<b>22%</b>	\$86,375	\$172,750	\$86,375	\$86,350	-
<b>24%</b>	\$164,925	\$329,850	\$164,925	\$164,900	<b>\$9,550</b>
<b>32%</b>	\$200,000	\$400,000	\$200,000	\$200,000	-
<b>35%</b>	\$400,000	\$450,000	\$225,000	\$425,000	<b>\$12,500</b>
<b>39.6%</b>					

- The 20% capital gains rate increases to 25%

*New rate applies  
The date the  
bill is introduced.*



	TOP OF EACH BRACKET				
	S	MFJ/QW	MFS	HOH	T&E
<b>0%</b>	\$40,400	\$80,800	\$40,400	\$54,100	<b>\$2,650</b>
<b>15%</b>	\$400,000	\$450,000	\$225,000	\$425,000	<b>\$12,500</b>
<b>25%</b>					

*Using 2021 figures, except  
for the new 35%,  
39.6%, and 25%  
thresholds.*



# 2021 Tax Reform – *Individuals*

- 3.8% Net Investment Income Tax (NIIT) expansion
  - Expands the NIIT to cover income derived in the ordinary course of a trade or business for high income taxpayers
  - Does not apply to income on which FICA is already imposed
  - Applies after 12/31/21

Expanded NIIT Threshold	
Married Filing Jointly (MFJ)	\$500,000
Head of Household (HoH)	\$400,000
Single	\$400,000
Married Filing Separately	\$250,000
<b>Estates &amp; Trusts</b>	<b>\$12,500</b>

# 2021 Tax Reform – *Individuals*

- New Section 199A Limitation

- Imposes a maximum allowable deduction - I.E. A CAP ON THE AMOUNT CLAIMED
- Applies after 12/31/21

199A Maximum Deduction	
Married Filing Jointly (MFJ)	\$500,000
Head of Household (HoH)	\$400,000
Single	\$400,000
Married Filing Separately	\$250,000
<b>Estates &amp; Trusts</b>	<b>\$10,000</b>

# 2021 Tax Reform – *Individuals*

- Excess Business Loss Limitation

- Section 461(l) limits pass-through business net losses which can offset non-business income to **\$250,000** (or \$500,000 MFJ)
- This was added by the TCJA and set to sunset in 2025 (note, the CARES Act modified the effective date)
- This legislation would permanently apply the limitation beyond 2025

# 2021 Tax Reform – *Individuals*

- *New High Income Taxpayer Surcharge*
  - A surcharge equal to 3% of excessive Modified AGI
  - The AGI threshold is \$5,000,000 generally (\$2,500,000 MFS)
  - **The AGI threshold is \$100,000 for trusts & estates**
  - Modifications to AGI include a reduction for investment interest

$$39.6\% + 3.8\% + 3\% = 46.4\%$$

# 2021 Tax Reform – *Individuals, Trusts & Estates*

- Termination of the Temporary Increase in the Unified Credit
  - Resets the estate tax exemption to \$5,000,000 in 2010 dollars
  - In 2022, the exemption will therefore be approximately: \$6,000,000

The exemption change will be effective to deaths, GST transfers, and gifts made after December 31, 2021

# Estate & GST Taxes

## *Review of Current Situation*

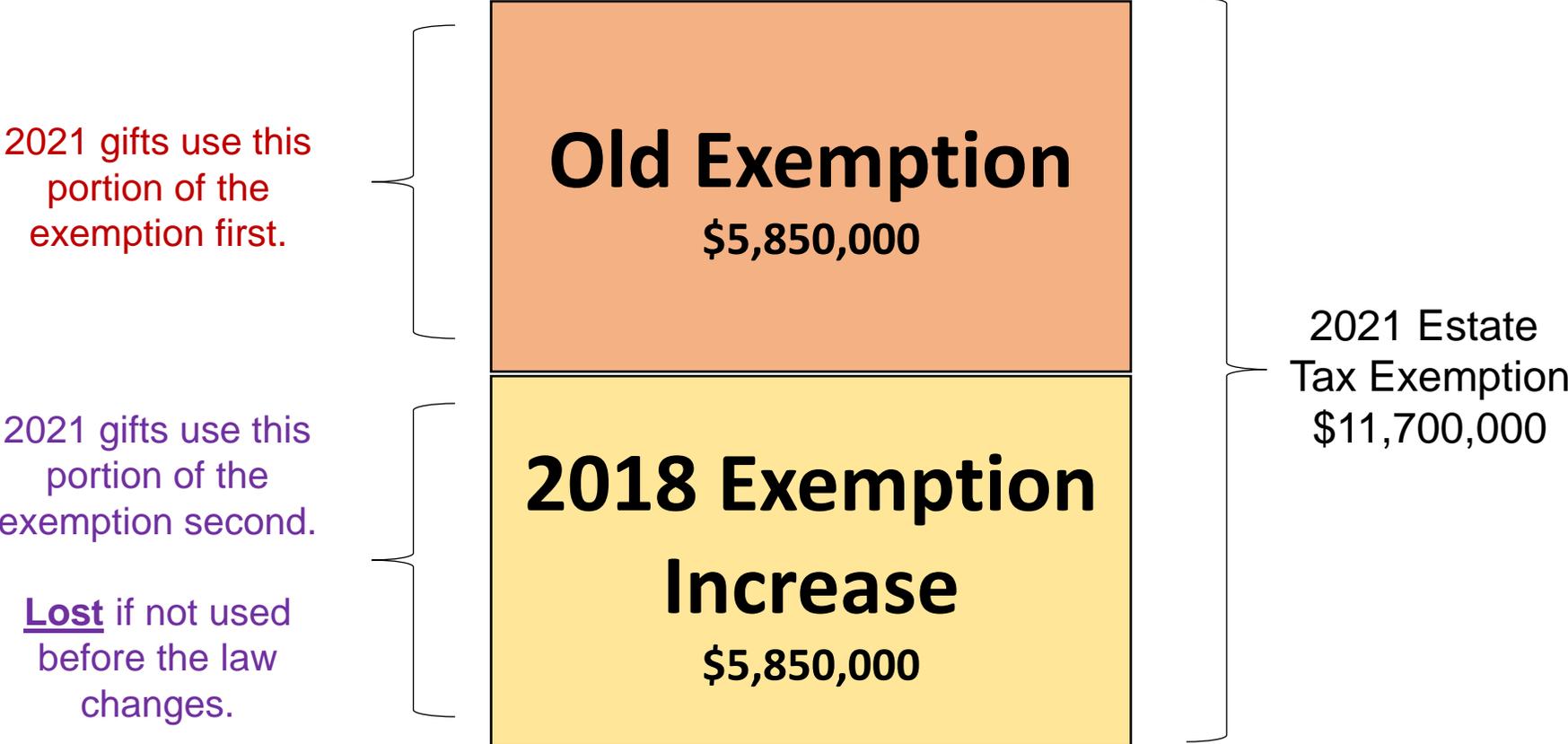
- ***Recall:***

- The TCJA doubled the Basic Exclusion Amount and GST exemption from 2018-2025 (\$10,000,000 in 2011 dollars)
- In 2026 the exemption is set to revert to pre-TCJA law (5,000,000 in 2011 dollars)
- This legislation will accelerate sunset to 2022

**POTENTIAL  
“USE-IT-OR-LOSE-IT”  
OPPORTUNITY**

# Estate & Gift Taxes

## Exemption Reduction Math – “Use It or Lose It”



# 2021 Tax Reform – *Individuals, Trusts & Estates*

- 2032A Special Valuation reduction increase:
  - 2032A allows a taxpayer to value property used in a family farm or business based on its current use, rather than its highest and best use;
  - The amount a valuation can be reduced has been frozen at \$750,000 for many years.
  - The legislation would increase the allowable reduction to \$11,700,000 and index it for inflation.
  - The change would apply to deaths after 12/31/21.

# 2021 Tax Reform – *Individuals, Trusts & Estates*

- Grantor Trusts

- The legislation would add Section 2901, to force grantor trusts to be included in the taxable estate.
- The legislation would also add Section 1062, which would eliminate non-taxable IDGT sales (and even GRATs).
- These changes will apply to trusts created on or after the date of enactment and transfers on or after the date of enactment to pre-existing trusts.

Existing trusts will be grandfathered and there may be a short window of opportunity capture significant future tax benefits.

# Grantor Trusts – Sec. 2901

- Assets in grantor trusts are included in the grantor's estate (except grandfathered ones).
- Distributions from grantor trusts during the life of the deemed owner are gifts.
- The assets of a grantor trust are deemed to be a gift if the grantor trust status is "turned off."
- However, the bill provides an adjustment for taxable gifts as to avoid double inclusion.



# IDGT Sales – Sec. 1062

- Deemed ownership disregarded in determining whether a transfer is a sale or exchange:
  - Exception for fully revocable trusts
  - Deemed owners expanded to related parties for the purposes of new Section 1062



3 **“SEC. 2901. APPLICATION OF TRANSFER TAXES.**

4       “(a) IN GENERAL.—In the case of any portion of a  
5 trust with respect to which the grantor is the deemed  
6 owner—

7           “(1) the value of the gross estate of the de-  
8 ceased deemed owner of such portion shall include  
9 all assets attributable to that portion at the time of  
10 the death of such owner,

11           “(2) any distribution (other than to the deemed  
12 owner or the deemed owner’s spouse) from such por-  
13 tion to one or more beneficiaries during the life of  
14 the deemed owner of such portion (other than in dis-  
15 charge of an obligation of the deemed owner) shall  
16 be treated as a transfer by gift for purposes of chap-  
17 ter 12,

**The Build Back Better Act**

18           “(3) if at any time during the life of the  
19           deemed owner of such portion, such owner ceases to  
20           be treated as the owner of such portion under sub-  
21           part E of part 1 of subchapter J of chapter 1, all  
22           assets attributable to such portion at such time shall  
23           be treated for purposes of chapter 12 as a transfer  
24           by gift made by the deemed owner, and

**The Build Back Better Act**

1           “(4) proper adjustment shall be made with re-  
2           spect to amounts so included in the gross estate, or  
3           treated as transferred by gift, pursuant to para-  
4           graph (1), (2), or (3), as the case may be, to ac-  
5           count for amounts treated previously as taxable gifts  
6           under chapter 12 with respect to previous transfers  
7           to the trust by the deemed owner.

**The Build Back Better Act**

8           “(b) EXCEPTIONS.—This section shall not apply to  
9 any trust that is includible in the gross estate of the  
10 deemed owner (without regard to subsection (a)(1)).

11           “(c) DEEMED OWNER DEFINED.—For purposes of  
12 this chapter, the term ‘deemed owner’ means any person  
13 who is treated as the owner of a portion of a trust under  
14 subpart E of part 1 of subchapter J of chapter 1.”.

**The Build Back Better Act**

## Sec. 138209. Certain Tax Rules Applicable to Grantor Trusts

This provision adds section 2901, which pulls grantor trusts into a decedent's taxable estate when the decedent is the deemed owner of the trusts. Prior to this provision, taxpayers were able to use grantor trusts to push assets out of their estate while controlling the trust closely. The provision also adds a new section 1062, which treats sales between grantor trusts and their deemed owner as equivalent to sales between the owner and a third party. The amendments made by this section apply only to future trusts and future transfers.



*Subtitle I – Responsibly Funding Our Priorities*

Section-by-Section

**The Build Back Better Act Description**

# § 677

## (a) General rule

The grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under section 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be—

(1) distributed to the grantor or the grantor's spouse;

(2) held or accumulated for future distribution to the grantor or the grantor's spouse; or

(3) applied to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse (except policies of insurance irrevocably payable for a purpose specified in section 170(c) (relating to definition of charitable contributions)).

**IRC § 677. Income for Benefit of Grantor**

# adverse party

the term “adverse party” means any person having a substantial beneficial interest in the trust which would be adversely affected by the exercise or nonexercise of the power

Generally, the interest of younger generations would be adverse to those of older generations.

## § 677. Income for Benefit of Grantor

# Example

- In 2015 Mary, at age 82, took out \$1,000,000 of whole life insurance
- The premium is \$65,000 per year for 10-years; she has three payments remaining in 2022, 2023, and 2024
- This policy is owned by a GST exempt ILIT and is funded annually with a mix of *Crummey* gifts and lifetime exemption gifts



# Example

- Section 677(a)(3) causes the trust to be treated as a grantor trust
- New proposed Section 2901(a)(1) would cause any post-gift appreciation in a grantor trust to be included a taxable estate
- How can Mary potentially avoid this trap?
  - Exchange the policy for a new policy
  - 2021 gifts before enactment to pay future premiums
  - Borrow money to pay the premiums (variety of options)
    - Intra-family loans
    - External loans

# 2021 Tax Reform – *Individuals, Trusts & Estates*

- Valuation Rules:
  - The legislation would amend **Section 2031** to eliminate valuation adjustments for non-business assets.
  - This is similar to a proposal from Senator Sanders earlier this term.

This provision would apply to transfers after the date of enactment.

# Valuation Rules – In General

- Appraisals commonly consider valuation adjustments for:
  - Marketability
  - Minority interests
  - Blockage
  - Taxes on Built-in Gain

# Valuation Rules – New Section 2031(d)

- New General Valuation Rules
  - The “Non-business” assets of an entity transferred are valued as if the asset were transferred directly.
  - Non-business assets means any asset not used in the active conduct of a trade or business.
  - Certain “Passive assets” can be treated as business assets if used in the active conduct of a trade or business.

# Valuation Rules – New Section 2031(d)

- **“Non-Business Assets:”**
  - Held for the production or collection of income, and
  - Not used in the active conduct of a trade or business.
- Certain **“Passive Assets”** can be treated as business assets if used in the active conduct of a trade or business:
  - Certain hedges
  - Real property trades or business in which the transferor materially participates
- Additional exception for **“reasonably required” working capital.**

# Valuation Rules – New Section 2031(d)

- **Look-thru rule:**

- Designed to prevent any discount for non-business assets held in a lower-tier entity
- 10% ownership interest threshold
- The upper-tier entity is treated as if directly owning its ratable share of the lower-tier entity's assets

# Valuation Rules

## Example

	Before Enactment	After Enactment
Gross Value	\$10,000,000	\$10,000,000
Marketability Adjustment	(2,000,000)	(0)
Minority Interest Adjustment	(1,200,000)	(0)
Net Value	\$6,800,000	\$10,000,000
Estate Tax @ 40%	\$2,720,000	\$4,000,000

# Valuation Rules

## *Example/Summary*

Operation	Trade or Business	Owned by	Marketability Discount	Subtract out Non-Business Assets
Automobile Dealership	Yes	Family Members	Yes	Yes
Apartment Building – Material Participation	Yes	Family Members	Yes	Yes
Triple Net Lease Real Estate – No Material Participation	No	Family Members	No	N/A – entire enterprise treated as a non-business asset

# 2021 Tax Reform – *Retirement Plan Limits*

- Contribution Limits for Taxpayers with Large Balances – **New Sec. 409B**
  - Annual additions (any contributions) are prohibited if the taxpayer has an excessive balance, effective after 12/31/21.
  - However, the limit would only apply to taxpayers with AGI in excess of the following thresholds:

## **Contributions to High Balance Plans Limited**

Married Filing Jointly (MFJ)	\$450,000
Head of Household (HoH)	\$425,000
Single	\$400,000
Married Filing Separately	\$400,000

*All figures would be adjusted annually for inflation.*

# 2021 Tax Reform – *Retirement Plan Limits*

- Contribution Limits for Taxpayers with Large Balances – **New Sec. 409B**
  - This applies to a tax year when total defined contribution plan and IRA accumulations exceeds \$10,000,000 (the applicable threshold) on 12/31 of the prior year.
  - Rollovers would not be considered an addition
  - Accounts acquired by death or divorce or separation would not be considered an addition
  - Additional reporting requirements imposed on accounts in excess of \$2,500,000
  - Section 4973(i) is added to impose a 6% excise tax

# 2021 Tax Reform – *MEGA RMD*

- Increased RMD for High-income Taxpayers with Large Balances – ***New Sec. 4971(e)***
  - An additional minimum distribution will be imposed on taxpayer's with large retirement account balances after 12/31/21. Page 684, lines 6-8.
  - It will apply when total defined contribution plan and IRA accumulations exceed \$10,000,000 (applicable dollar amount) on 12/31 of the prior year. New proposed Section 4974(e)(3)(A); Page 666, line 24 – Page 667, line 8. New proposed Section 409B(b)(a); Page 667, lines 17-18.

# 2021 Tax Reform – *MEGA RMD*

- Increased RMD for High-income Taxpayers with Large Balances – ***New Sec. 4971(e)***

– However, this would only apply to high-income taxpayers:

<b>"MEGA" RMDs Imposed</b>	
Married Filing Jointly (MFJ)	\$450,000
Head of Household (HoH)	\$425,000
Single	\$400,000
Married Filing Separately	\$400,000

# 2021 Tax Reform – *MEGA RMD*

- Increased RMD for High-income Taxpayers with Large Balances – ***Proposed New Sec. 4971(e)***:
  - **50% Distribution Rule:** The new additional minimum distribution would generally be 50% of the amount total accumulations exceed \$10M (“the applicable dollar amount”). Proposed New Sec. 4971(e)(1); Page 674, line 17 – page 675, line 23.
  - **100% Distribution Rule:** In addition, to the extent that the combined balance amount in traditional IRAs, Roth IRAs and defined contribution plans exceeds \$20 million, that excess is required to be distributed from Roth IRAs and Roth designated accounts in defined contribution plans up to the lesser of (1) the amount needed to bring the total balance in all accounts down to \$20 million or (2) the aggregate balance in the Roth IRAs and designated Roth accounts in defined contribution plans. Proposed New Sec. 4971(e)(2); Page 675, line 24 – page 676, line 23.

# 2021 Tax Reform – *MEGA RMD Ordering Rules*

- May choose which accounts to take MEGA RMD
- But if accounts are over \$20M there is a special Roth rule
  - If combined balances in traditional IRAs, Roth IRAs, and defined contribution plans exceeds \$20M, that excess is required to be distributed from Roth IRAs and Roth designated accounts up to the lesser of:
    - (1) the amount needed to bring the total balance in all accounts down to \$20 million, or
    - (2) the aggregate balance in the Roth IRAs and designated Roth accounts in defined contribution plans.
  - Once distribute the amount of any excess required under this 100% distribution rule for accounts over \$20M, then may determine which account to distribute for the 50% distribution rule for accounts over \$10M

# 2021 Tax Reform – *MEGA RMD & Regular RMD*

- MEGA RMD is in addition to any other RMD
- Coordination rules under bill say that an individual first takes the regular RMD and then the MEGA RMD
- Regular RMDs will not reduce the amount of the MEGA RMD for a given year, nor does MEGA RMD reduce regular RMD for a given year (account balances are determined as of prior year end)

# 2021 Tax Reform – *MEGA RMD Only For Vested Balances*

- Bill says if the aggregate vested balances to the credit of the payee (whether as a participant, owner, or beneficiary) in all applicable retirement plans exceeds \$10M
- So important to note that this only applies to vested balances and unvested balances are not considered for purposes of this distribution rule

# 2021 Tax Reform – *MEGA RMD For Beneficiary of Inherited Account*

- Bill says if the aggregate vested balances to the credit of the payee (whether as a participant, owner, or beneficiary) in all applicable retirement plans exceeds \$10M.
- This rule applies to a payee as a beneficiary, so this appears to also capture inherited retirement accounts and a beneficiary who inherits a MEGA retirement account would be subject to this MEGA RMD if beneficiary is a high-income individual

# 2021 Tax Reform – *MEGA RMD No 10% Penalty*

- MEGA RMD would be exempt from 10% premature distribution tax. Proposed new Section 72(t)(2)(I), Page 682 line 19 – page 683 line 4.

# MEGA RMD Planning – *Income Management*

- MEGA RMD does not apply if income below threshold even if have over \$10M in retirement account balances
- Reduce or eliminate taxable income and only incur tax-exempt income where possible
  - Charitable giving
  - Oil & Gas Investments
  - Life insurance
  - Large defined benefit plan contributions
- \$10M threshold applies separately to spouses
  - If a couple files separately, their income threshold would be \$400,000 instead of \$450,000, but if a non-working spouse has a MEGA IRA filing separately may be a way to avoid subjecting the non-working spouse to this MEGA IRA RMD

# MEGA RMD Planning – *Charity*

- IRA QCD is only \$100,000
- Taxable distribution from IRA and donate the cash to charity
  - While the IRA distribution will be included in income, the charitable donation should partially or fully offset the income
  - Cash donations are generally deductible up to 60% of AGI, however, for 2020 and 2021 cash donations are deductible up to 100% of AGI
  - Clients with MEGA IRAs may want to review taking a distribution in 2021 while the 100% of AGI rule still applies as a way to reduce the value of their IRA to avoid the MEGA IRA RMD in 2022

# MEGA RMD Planning – *IRA Relocation Life Insurance*

- Given the SECURE Act's 10-year distribution rule for inherited IRAs many clients have been reviewing taking IRA distributions during life to pay for life insurance premiums
  - While the IRA distributions are taxable, the life insurance can provide an income and estate tax-free death benefit, as well as tax-deferred growth of the cash value while the insured is alive
- If there is a required distribution on MEGA IRAs, clients may review using the after-tax amount to purchase life insurance because the life insurance can provide tax-deferred growth and a tax-free death benefit.
- Clients who are approaching the MEGA IRA threshold may want to review taking IRA distributions strategically over time to pay for life insurance premiums.
  - Owners of MEGA IRAs are going to be high net worth and likely have estate tax concerns, so the life insurance should probably be owned in an ILIT to keep the death benefit out of the client's taxable estate (keep in mind grantor trust proposals and estate tax proposals).

# MEGA RMD Planning – *Defined Benefit Plans*

- Small business owners may want to give closer attention to defined benefit plans going forward because defined benefit plans do not fall under this MEGA RMD
- The bill also proposes to increase income taxes on high income taxpayers
  - 39.6% top rate
  - 25% capital gain tax rate
  - Expanding the 3.8% NIIT to active pass-thru business income for those who have taxable income over \$400,000/\$500,000
  - Adding a 3% surtax for those making over \$5 million
  - Capping the 199A deduction to \$400,000/\$500,000
- Large tax deductions from funding a defined benefit plan may be especially beneficial and defined benefit plans are not subject to the MEGA RMD.

# MEGA RMD Planning – *Roth Conversion in 2021*

- Complete Roth conversion in 2021 has benefits:
  - ✓ Income recognized in 2021, at a lower tax rate
  - ✓ No income recognized in 2022 or otherwise in the future
  - ✓ Growth on the converted funds is tax free until distribution (e.g. 11/1/21 – 12/30/22)
  - ✓ Additional benefit if cash from outside the IRA or qualified account can be used to pay the conversion
  - ✓ No regular RMDs imposed on Roth IRAs
  - ✓ “Filling” the \$10,000,000 cap with Roth IRAs is substantially more tax-efficient
  - ✓ Roth IRAs are substantially more estate tax efficient

# 2021 Tax Reform – *Retirement Plan Limits*

- Roth Conversion Income Limitations – **Amends Section 408A(e)**
  - Before 2010, those with income in excess of \$100,000 were prohibited from making Roth Conversions.
  - Currently, income limitations remain for Roth contributions; however “backdoor” conversions easily end-run these limits.
  - The bill would eliminate Roth conversions for taxpayers with income in excess of the following thresholds:

<b>Roth Conversion Income Limitation</b>	
Married Filing Jointly (MFJ)	\$450,000
Head of Household (HoH)	\$425,000
Single	\$400,000
Married Filing Separately	\$400,000

*Note, the proposed effective date for this new limitation is **2032.***

# 2021 Tax Reform – *Retirement Plan Limits*

- New Prohibited Investments

- The legislation would prohibit an IRA from holding investments which are only offered to accredited investors (i.e. nonregistered securities).
- This is an attempt at rough justice from Congress in order to prohibit investments that taxpayers use to accumulate huge sums in their retirement accounts.
- IRAs holding such assets after the effective date would be deemed to be distributed; however, a 2-year transition period is provided.
- The effective date would be 12/31/21.

# 2021 Tax Reform – *Retirement Plan Limits*

- IRA Non-Compliance Statute of Limitations
  - Currently, the SOL for valuation related reporting and PTs is 3 years.
  - The legislation would extend this to 6 years.
  - This would apply to taxes to which the current 3-year period ends 12/31/21.

# 2021 Tax Reform – *Retirement Plan Limits*

- IRA Self-Dealing

- Currently, an IRA cannot invest in a business entity in which the IRA owner holds a 50% or greater interest.
- The legislation reduce this threshold to 10% for investments which are not tradable on an established securities market.
- This limit would include direct and indirect interests.
- Further, the legislation would change this limit to an IRA requirement (it is currently a PT).
- This change would apply after 12/31/21, with a 2-year transition period for IRAs already holding such assets.

# 2021 Tax Reform – *Retirement Plan Limits*

- Disqualified Persons

- The bill would clarify that for the purposes of the PT rules, the IRA owner and beneficiary of an “inherited” IRA is always a disqualified person.
- This would apply to transactions after 12/31/21.

# Sensible Taxation and Equity Promotion (STEP) Act of 2021

*A Detailed Review of Introduced Legislation*

# Basic Proposal

- Realization of gains at gift – *Proposed New IRC § 1261*
- Realization of gains at death – *Proposed New IRC § 1261*
- Repeal of carryover basis for gifts – *IRC § 1015 modification*
- Repeal of the adjustment of basis to fair market value at death (the step-up) – *IRC § 1014 modification*

# Detailed Proposals

- **House Bill**
  - Introduced by Mr. Bill Pascrell (D., Nj.)
  - 2022 effective date
- **Senate Bill**
  - Sensible Taxation and Equity Promotion (STEP) Act of 2021
  - Introduced by Mr. Chris Van Hollen (D., Md.)
  - *Retroactive* 2021 effective date
- **President's Budget (Green Book)**
  - 2022 effective date
- **Very similar proposals**

# Core Statutory Language

- **Senate Language:**

*IN GENERAL.—Any property which is transferred by gift, in trust, or upon death shall be treated as sold for its fair market value to the transferee on the date of such gift, death, or transfer.*

# Core Statutory Language

- **House Language:**

*IN GENERAL.—Any property which is transferred by gift or at death shall be treated as sold for its fair market value on the date of such gift or death.*

# Detailed Proposals

- **Special Rules for Grantor Trusts – Common to Both Bills**
  - No realization when assets are transferred to a grantor trust
  - However, a realization event occurs:
    - If the trust is included in the grantor’s estate
    - When distributions are made to beneficiaries
    - If grantor trust status is “turned off”

# Exceptions to Forced Recognition

## *Under Proposed New § 1261*

- Spouses
- Certain grantor trusts (e.g. living trust)
- Gifts & bequests to charity
- Tangible personal property not used in a trade or business or for the production of income

These exceptions are shared with all three proposals  
(with some variation in the details)

Sensible Taxation and Equity Promotion (STEP) Act of 2021

# Exceptions to Forced Recognition

## *Under New § 139I*

- \$100,000 gain exclusion for gifts during life

Mom gifts \$250,000 of stock to daughter with a basis of \$120,000. \$30,000 of taxable income is recognized  
( $\$250,000 - \$120,000 - \$100,000$ )

- \$1,000,000 gain exclusion for gifts at death

Mom gifts \$2,500,000 of stock to daughter with a basis of \$1,200,000. \$300,000 of taxable income is recognized  
( $\$2,500,000 - \$1,200,000 - \$1,000,000$ )

Sensible Taxation and Equity Promotion (STEP) Act of 2021

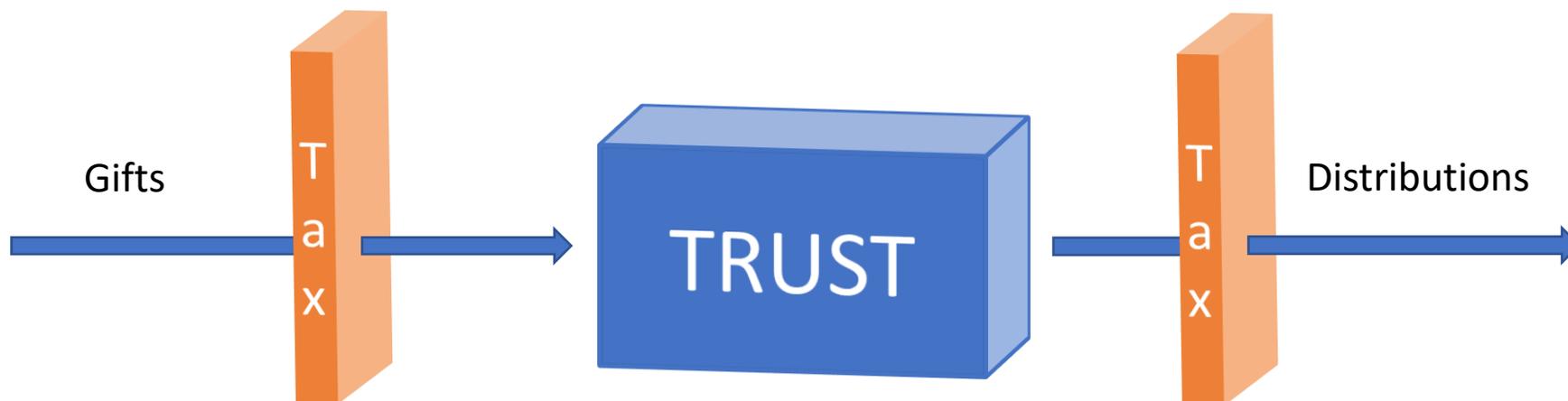
# Exceptions to Forced Recognition

- The President's Budget additionally provides:
  - The \$1,000,000 exclusion at death is reduced by any gifts which use the lifetime exclusion
  - The \$1,000,000 exclusion is portable between spouses

Department of the Treasury (May 2021), *General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals* (i.e. the Green Book), page 62-64

# Detailed Proposals

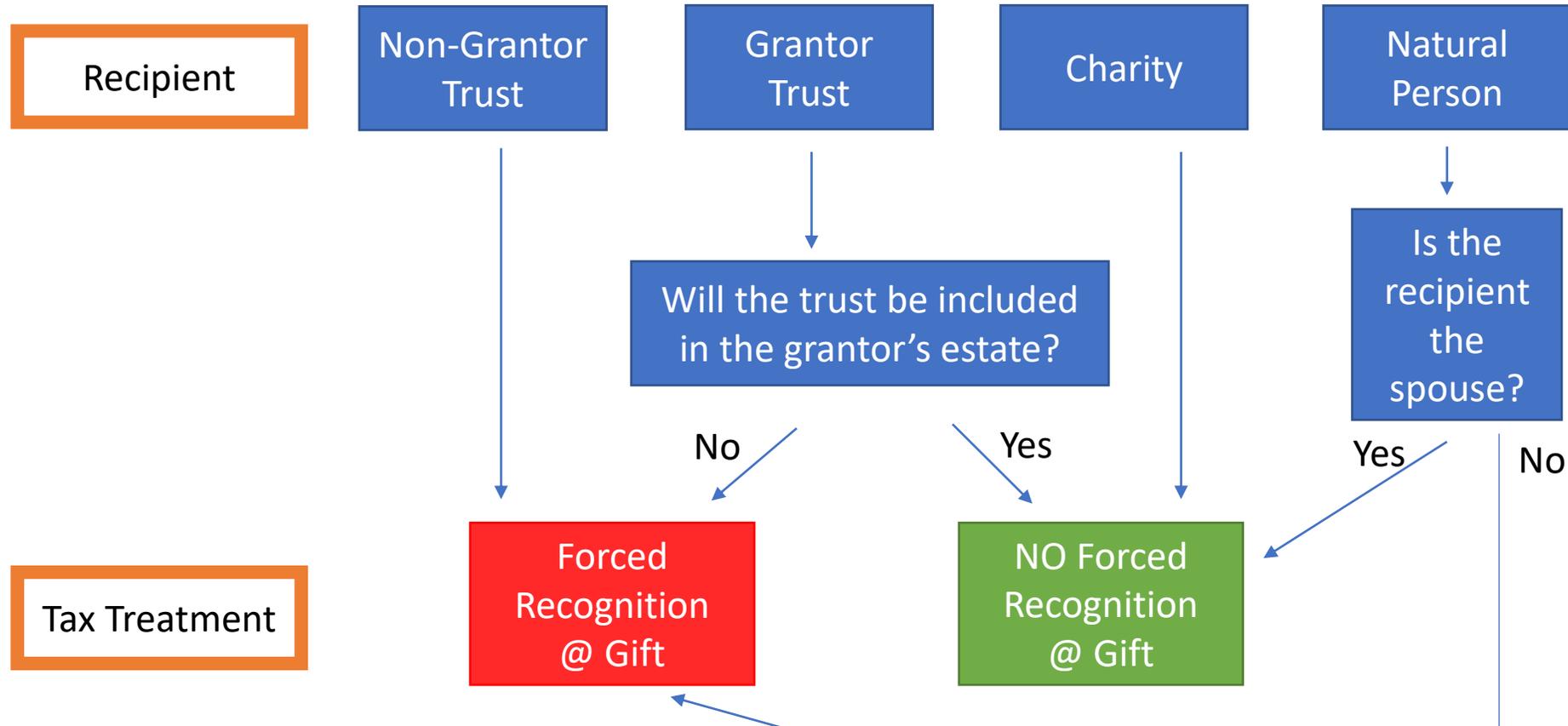
- **Special Rules for Non-Grantor Trusts – Common to Both Bills (the budget is unclear regarding distributions)**
  - Recognition event upon transfer to trust
  - Recognition event upon distributions from trust



# Detailed Proposals

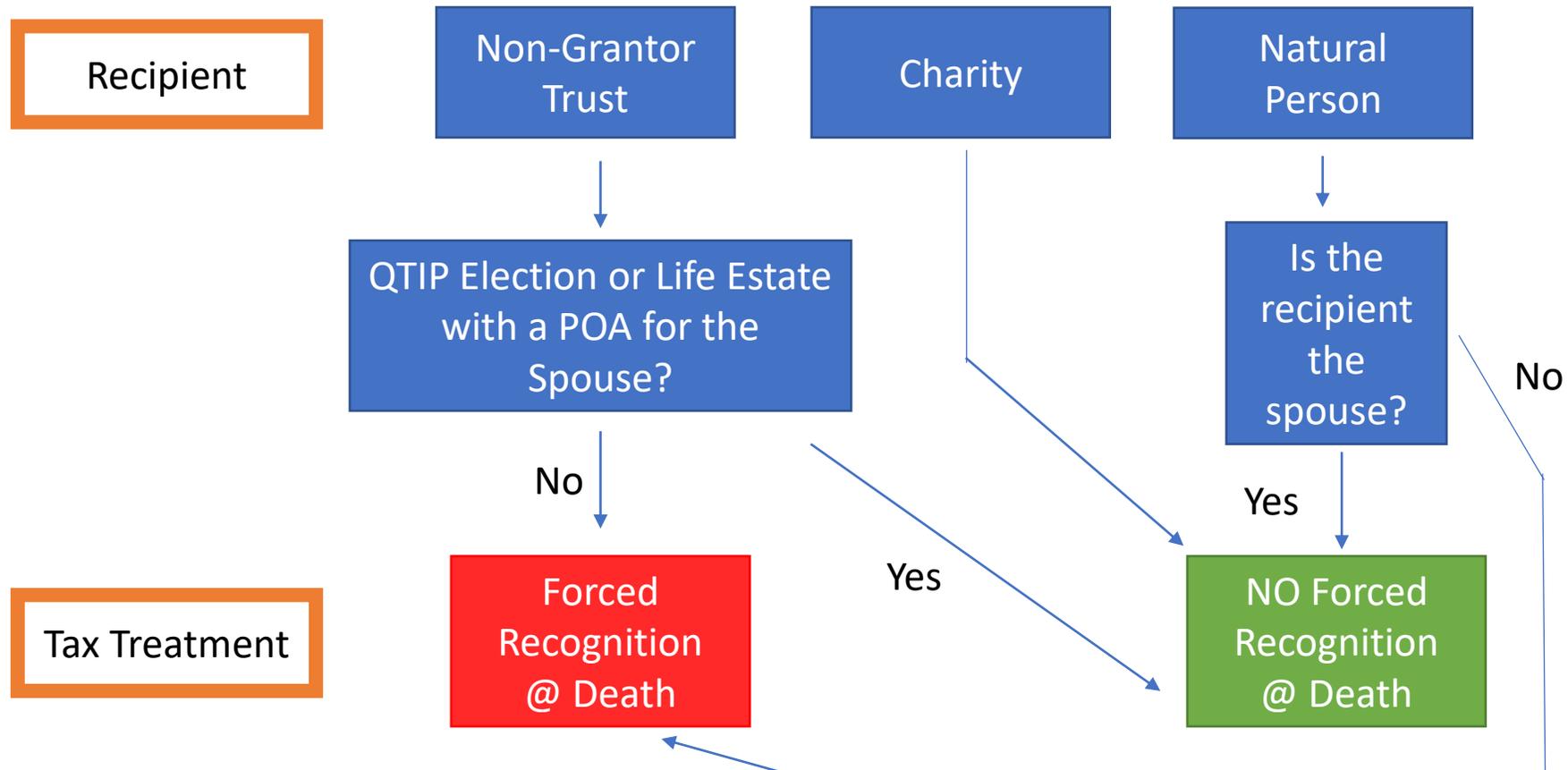
- **Periodic deemed recognition event for Non-Grantor Trusts – Common to Both Bills & the President’s Budget**
  - House Bill
    - Deemed recognition event for any property continuously held in trust after a period of 30 years
    - Any property continuously held in trust for more than 30 years on January 1, 2022 shall ne treated as transferred
  - Senate Bill
    - Deemed recognition event for all property held in trust every 21 years
    - All property held in trust on since December 31, 2005 on December 31, 2026 (21 years)
  - President’s Budget
    - Deemed recognition event for all property held in trust every 90 years
    - All property held in trust on since January 1, 1940; first recognition date of December 31, 2030

# Forced Recognition @ Gift



The STEP Act of 2021, Proposed New IRC 1261

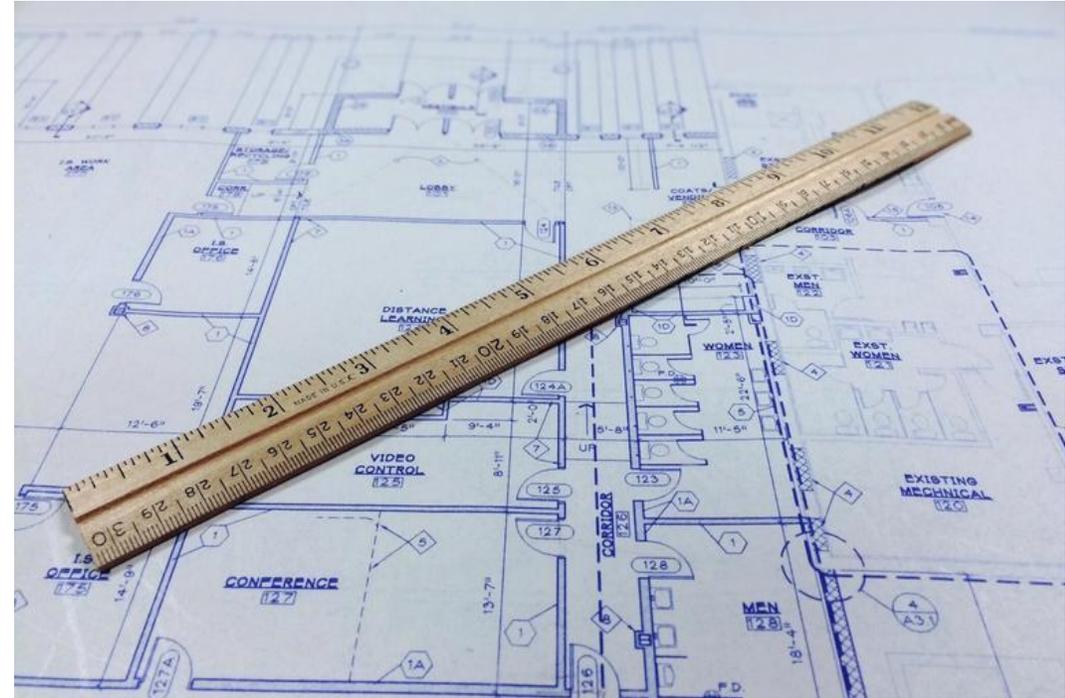
# Forced Recognition @ Death



The STEP Act of 2021, Proposed New IRC 1261

# Income Tax Planning Ideas

- **Gain Harvesting**
- Advanced Security Strategies
- **Charitable Remainder Trusts\***
- Charitable Lead Trusts\*
- Donating Capital Gain Property
- **Installment Sales**
- Opportunity Zones
- Section 1031 Exchanges



\*The President's budget proposes a forced recognition event when appreciated assets are transferred to a split-interest trust.

# Conclusion