

WILMINGTON TRUST

Emerald Family Office & Advisory

PROVIDING STRATEGIC TRANSITION PLANNING AND SOLUTIONS

Preparing For The Wave Of Tax Law Change

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Proposed Tax Legislation

Numerous proposals have been put forth by President Biden and Congress

President Biden's proposals (including the Treasury's "Green Book")

- The American Jobs Plan
- The American Families Plan

Congressional proposals

- For the 99.5% Act
- Sensible Taxation and Equity Promotion (STEP) Act
- Ultra-Millionaire Tax Act
- Accelerating Charitable Efforts (ACE) Act
- Death Tax Repeal of 2021

Biden Tax Proposals and the Green Book

On May 28, 2021, the Treasury released the so-called **Green Book**, which includes detailed information about President Biden's tax proposals for the American Jobs Plan and the American Families Plan.

These and other proposals may impact **individuals, families, and business owners** as follows:

Individuals

- Ordinary income tax rates
- Long-term capital gains rates

Families

- Recognition of long-term capital gain property
- Estate and gift tax exemptions and rates

Business owners

- Social Security and Medicare payroll taxes
- Deferral on like-kind exchanges (aka 1031 exchanges)
- Limits on business losses



Ordinary
Income

Long-Term
Capital Gains

Estate &
Gift Tax

Social Security
and Medicare

Real Property Like-
Kind Exchanges

Limits on
Business Losses

Ordinary Income Tax Rates

Current law:

- Top ordinary tax rate is 37%
- Additional 3.8% net investment income tax may be incurred
- Highest rate of 40.8% (37% plus additional 3.8% net investment income tax)
- Top tax rate is in effect until December 31, 2025

Proposals:

- Increase top marginal tax rate to 39.6%
- Highest rate of 43.4% (39.6% plus additional 3.8% net investment income tax)
- Effective for taxable years beginning after December 31, 2021
- Highest income tax rate may begin at income threshold lower than those applied in 2021

Actions to consider:

- Time income, deductions, and credits
 - Installment sale of a business or other assets
 - Roth IRA conversion
 - “Bunch” charitable deductions
 - Contribute to retirement plans, health savings accounts, etc.

Note: in addition to proposed increases to federal income tax rates, a number of states have also proposed or enacted increases to state and local taxes, potentially increasing the impact of any proposed federal legislation



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Long-Term Capital Gains – Tax Rates

Current law:

- Highest capital gains tax rate of **23.8%** (20% plus additional 3.8% net investment income tax)
- Tax is recognized upon a sale, certain exchanges, or other determined taxable event.

Proposals:

- Highest rate of **43.4%** (39.6% plus additional 3.8% net investment income tax)
- Effective as of the date of announcement, potentially applying to gains realized **after April 28, 2021**

Actions to consider:

- Assess years in which greater income may be expected due to significant event (e.g., sale of a business)
- Time realization of gains to result in least amount of tax, potentially occurring in sooner time period
- Utilize deductions or losses when most beneficial



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Long-Term Capital Gains – Timing

Current law:

- No gain recognized on transfer, either during lifetime or at death
- Carryover basis for assets transferred during lifetime
- Stepped-up basis for most inherited assets

Proposals:

- Recognition of gain upon transfer, both during lifetime or at death
 - \$1,000,000 per person exemption and certain exceptions, including for spouses and family businesses
 - Elimination of basis step-up on inherited assets
 - Effective for transfers after **December 31, 2021**
- Recognition of gain on property held by trusts and other noncorporate entities if no gain realized within prior 90 years
 - First possible recognition event would be **December 31, 2030**
 - Effective for property owned by entities on or after **January 1, 2022**

Actions to consider:

- Make gifts prior to **January 1, 2022**; prioritize higher basis assets or cash
- Consider in-kind distributions to beneficiaries from established trusts to avoid deemed recognition



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Estate and Gift Tax – Rates and Exemptions

Current law:

- **\$11,700,000** exemption per person from federal gift and estate tax in 2021
- Exemption will sunset on **December 31, 2025**, reverting to \$5,000,000 per person, indexed for inflation
- Top tax rate of **40%**

Proposals:

- The Green Book did not include any proposals to change the current estate tax exemption or tax rates
- Prior campaign proposals included reducing exemption amount, potentially to as low as \$3,500,000 per person
- Several Democratic senators have proposed additional changes to estate taxes as well as a new wealth tax

Actions to consider:

- Utilize current exemption by making lifetime gifts to trusts, including dynasty or spousal life access trusts, before sunset or legislative reduction to exemption
- Gifting appreciating assets will remove appreciation from taxable estate



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Social Security and Medicare Payroll Taxes

Current law:

- Employees and self-employed persons pay Social Security tax and Medicare taxes
- For employees, the Social Security tax is **6.2%** up to a wage limit of \$142,800 for 2021

Proposals:

- Additional Social Security tax would be imposed for wage incomes over \$400,000
- All pass-through business income of high-income taxpayers will either be subject to the net investment income tax (3.8%) Self-Employment Contributions Act (SECA) tax
- Effective for taxable years beginning after **December 31, 2021**

Actions to consider:

- If possible, time income to minimize years that exceed threshold income amounts



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Deferral on Real Property Like-Kind Exchanges

Current law:

- Gains on the sale of appreciated real property used in a trade or business or held for investment may be deferred if exchanged for property of a “like kind”
- Commonly referred to as a 1031 Exchange

Proposals:

- Limit deferral of gains to \$500,000 per year (\$1,000,000 for married couples), with excess subject to income tax recognition
- Effective for exchanges completed after **December 31, 2021**

Actions to consider:

- Complete like-kind exchange prior to 2022
- Time deductions and credits to offset taxes in connection with post-2021 like-kind exchanges



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**Limits on
Business Losses**

Limitations on Business Losses

Current law

- Excess business loss deduction limited to \$524,000 for married couples in 2021 (\$262,000 for all other taxpayers) and indexed for inflation in future years
- Unused losses may be carried forward as net operating losses
- Limitation effective until **December 31, 2026**

Proposals:

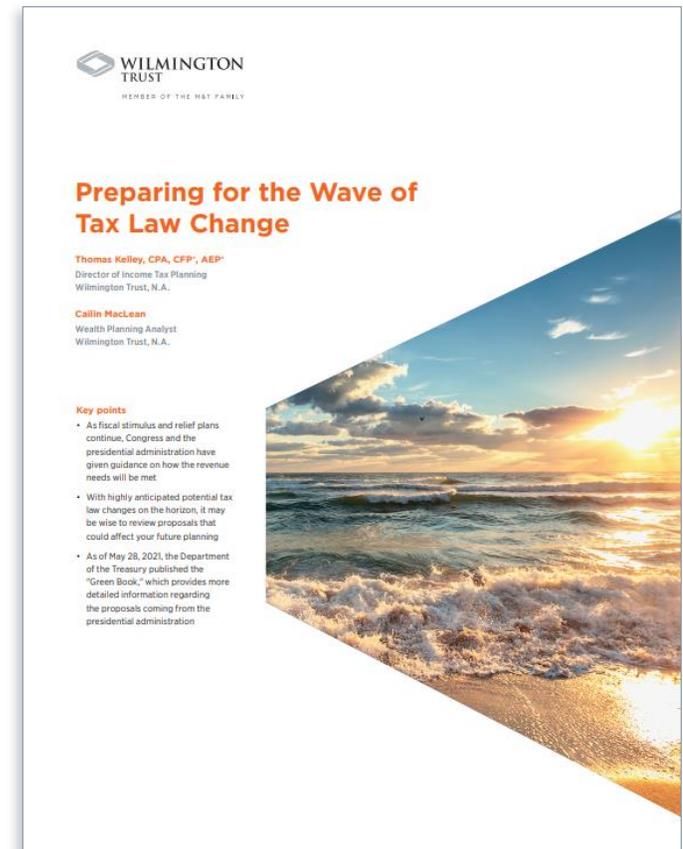
- Make limitation permanent for taxable years beginning after **December 31, 2026**

Actions to consider:

- Business owners may plan or assume that under current law an “unlimited” amount of carryover losses may be available after 2026; however, annual limitations may still apply.

Wilmington Trust Resources and Authored Articles

- **Preparing for the Wave of Tax Law Change**
 - [Preparing for the Wave of Tax Law Change | Wealth Management](#)
- **Biden Tax Proposals Taking Shape: Is Your Wealth Plan Ready?**
 - [Biden Tax Proposals Taking Shape | Wilmington Trust](#)
- **Senate Bills Propose Changes to Estate Tax**
 - [Senate Bills Propose Changes to Estate Tax | Wealth Management](#)
- **Is Your Financial Plan Ready for Higher Taxes?**
 - [Is Your Financial Plan Ready for Higher Taxes? | Kiplinger](#)



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Expertise In

- Estate and trust planning
- Succession planning
- Life insurance planning
- Cross-border planning

As part of the Wilmington Trust Emerald Family Office and Advisory team, Alvina is responsible for wealth planning, strategic advice, and thought leadership development for Wilmington Trust's Wealth Management division. She oversees a national team of wealth strategists, financial planners, and thought leadership experts, who together, serve as advisors to high-net-worth individuals and families, business owners, entrepreneurs, and foundations and endowments.

Prior to joining Wilmington Trust, Alvina was the director and senior wealth planner for Citi Private Bank where she served as an advisor to U.S. and international ultra-high-net-worth clients. Previous to that, she served as a wealth strategist with Credit Suisse Private Wealth and managed the third-party trustee platform. Earlier in her career, Alvina practiced law at Milbank Tweed Hadley & McCloy, LLP in the Trusts & Estates group and served as a consultant for Deloitte Consulting and Scient Corporation.

Alvina holds a bachelor's degree in civil engineering from the University of Virginia where she was a Thomas Jefferson Scholar. She received her JD from the University of Pennsylvania, where she was a member of the Law Review and Order of the Coif. She also holds a Professional Tax Certificate in Estate Planning from New York University School of Law.

Alvina has been recognized by *Crain's* New York Business as one of their Most Notable Women in Financial Advice in 2020. The honor recognizes leading women executives in New York City for their dedication to excellence in the financial industry and significant professional, civic, and philanthropic contributions. She was also recognized as one of *Worth's* Groundbreakers 2020: 50 Women Changing the World. She is a published author on estate planning matters and has lectured at the American Bankers Association, American Bar Association, Delaware Trust Conference, Hawaii Tax Institute, and Barron's Top Women Advisors Summit. She has been quoted in the *New York Times*, *Barron's*, *Bloomberg*, and *Business Insider*. She is admitted to practice in the states of New York and New Jersey. She is also a member of the Society of Trust and Estate Practitioners (STEP) and is a member of Women In America, a professional development group. She is a regional committee co-chair of the Thomas Jefferson Scholarship Foundation for the University of Virginia. Alvina is bilingual and speaks fluent Chinese-Cantonese and basic Chinese-Mandarin.

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Expertise In

- Strategic wealth planning
- Income tax planning
- Financial and trust planning

As part of the Wilmington Trust Emerald Family Office and Advisory team, Tom is responsible for developing customized and comprehensive wealth transfer and financial management plans for high-net-worth families and business owners throughout the United States. Tom's areas of proficiency include estate and retirement planning, income tax strategies, investment planning, and charitable planning.

Prior to joining Wilmington Trust, Tom held various senior tax and wealth planner positions with Bank of America and Brown Advisory.

Tom holds a master's degree in taxation from the University of Baltimore and a bachelor's degree in business administration, with a concentration in finance and minor in economics, from Towson University. He is a Certified Public Accountant (CPA) in Maryland, holds his Certified Financial Planner (CFP) designation, and is an Accredited Estate Planner (AEP) through the National Association of Estate Planning Councils.

Tom is a member of the American Institute of Certified Public Accountants (AICPA), the Baltimore Estate Planning Council, and the Maryland Association of Certified Public Accountants.

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- Charitable planning
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As part of the Wilmington Trust Emerald Family Office and Advisory team, Matt is responsible for developing customized wealth management strategies and financial plans for high-net-worth individuals, families, and business owners in the Tri-State area that includes New York City, Westchester, Long Island, Connecticut, and northern New Jersey. Matt works closely with clients and their advisors to develop financial and tax planning strategies to help clients meet their current needs and plan for their long-term objectives.

Prior to joining Wilmington Trust, Matt practiced law at Day Pitney LLP in New York City and at Nutter, McClennen & Fish LLP in Boston. In his role as an attorney, Matt represented domestic and international clients in the areas of income, estate, and gift tax, as well as succession planning. In addition, Matt was responsible for developing and implementing complex strategies, including dynasty and directed trusts, and planning through entity structuring. Matt also has significant experience assisting in the administration of charitable foundations and advising clients with respect to their philanthropic endeavors. Before his legal career, Matt worked for the Discovery Channel as a member of the advertising sales team in New York City.

Matt holds a JD from Northeastern University School of Law, where he was a member of the Law Journal, and is a graduate of Bowdoin College with a bachelor's degree in history. He is a member of the New York State and New York City Bar Associations and previously held a leadership role with the Boston Philanthropic Advisors Roundtable in Boston. Matt is admitted to the practice of law in New York and Massachusetts.

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