WELCOME TO THE TEAM!

J. BURKE WILLIAMSON

Welcome, **J. Burke Williamson.** Burke has been clerking with the firm since January while attending William S. Boyd School of Law at UNLV. He sat for the Nevada Bar in February. Burke obtained his LL.M. (Master of Laws in Taxation) from Loyola Law School in 2021. Prior to attending law school, Burke spent four years at Goldman Sachs & Co.

SCARLETT OLLILA

Scarlett Ollila is one of our newest staff members to join the Jeffrey Burr team. Scarlett joins the Summerlin office as its probate paralegal. Originally from Georgia, she brings over 13 years of legal experience with her. She is a great addition to the growing Summerlin office. Welcome aboard Scarlett!

AMBER ANDERSON-REYNOLDS

Amber Anderson-Reynolds joins the Henderson office as its newest paralegal in the Estate Planning department. Amber brings with her 18 years of experience in the legal field, with several of those years concentrated in estate planning. Welcome, Amber!

contact us

10000 W. Charleston Blvd., Suite 100 • Las Vegas, NV 89135 • **702.254.4455**
2600 Paseo Verde Parkway • Henderson, NV 89074 • **702.433.4455**
jeffreyburr.com

JEFFREY BURR
ESTATE PLANNING & PROBATE ATTORNEYS
2600 Paseo Verde Parkway
Henderson, NV 89074

JEFFREY BURR
ESTATE PLANNING & PROBATE ATTORNEYS

CLIENT FOCUS

BUILD BACK BETTER ACT

2021 was an interesting year for estate planning professionals and high-net-worth individuals and families. After a year of speculation and legislative uncertainty, congress was unable to pass the Build Back Better Act.

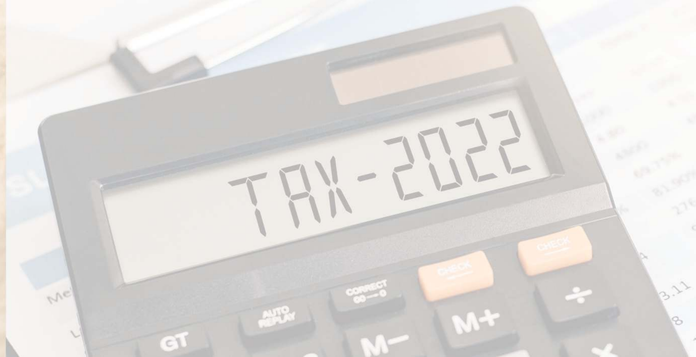
On September 15, 2021, the House Ways and Means Committee released legislative text detailing their proposed tax increases as part of President Biden's Build Back Better Framework.

On September 27, 2021, the legislative text proposed by the House Ways and Means Committee was advanced in a bill sponsored by Rep. John Yarmuth, D-KY, and introduced to the House Rules Committee as the Build Back Better Act (H.R. 5376).

The original bill included tax increases for high-income individuals and families, and sought to eliminate many of the key estate planning techniques utilized to reduce wealth transfer taxes.

Some of the more relevant proposals in original bill, included: (1) reduction of the basic exclusion amount for federal gift, estate, and generation-skipping transfer tax purposes from $11,700,000 to $5,000,000, indexed for inflation; (2) different tax treatment for grantor trusts that would have limited them as an estate planning vehicle; and (3) disallowance of the use of entity-level valuation discounts for nonbusiness assets held in family-owned entities.

Fortunately, the original bill was modified to eliminate the various sections relating to the items described above. The most recent legislative text of the Build Back Better Act (H.R. 5376) is found in the Rules Committee Print 117-18 released by the House Rules Committee on November 3, 2021, and subsequently amended by Rules Committee Print 117-19 on November 4, 2021.



Although the items mentioned above have been eliminated and are not included in the most recent legislative text found in Rules Committee Print 117-18, the updated text still includes language that would impose surcharges on high-income individuals, estates, and trusts.

Under the updated text of Rules Committee Print 117-18, a five (5%) percent surcharge would be imposed on the "modified adjusted gross income" of a taxpayer that exceeds $5 million (married filing separately), $200,000 (estate or non-grantor trust), and $10 million in all other cases. Additionally, a three (3%) percent surcharge would be imposed on the "modified adjusted gross income" of a taxpayer that exceeds $12.5 million (married filing separately), $500,000 (estate or non-grantor trust), and $25 million in all other cases.

The future of the Build Back Better Act remains uncertain, and it is difficult to predict whether the bill will be revisited by Senator Joe Manchin and his Senate colleagues. It is very possible that some version of the Build Back Better Act could be adopted by the House of Representatives and the Senate without any significant changes to wealth transfer tax laws. Despite all the uncertainty, the September proposal and original bill should provide individuals and families with an increased awareness of the congressional Democrats' playbook to target high-income individuals and families.

For calendar year 2022, the basic exclusion amount for federal gift, estate, and generation-skipping transfer tax purposes is $12,060,00 per person ($24,120,000 collectively for couples). The basic exclusion amount will be adjusted upward for inflation in future years, but under current law it is scheduled to "sunset" and be reduced by fifty percent (50%) on January 1, 2026. The Treasury Department has confirmed that taxpayers taking advantage

Continued next page...

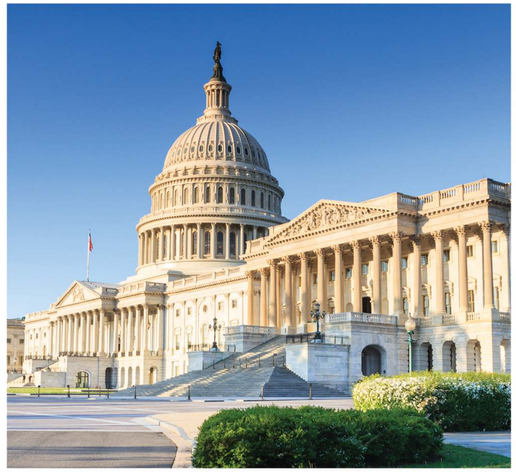
table of contents

spring 2022

Continued...

of the increased basic exclusion amount in effect from 2018 to 2025 will not be adversely impacted after 2025 when the basic exclusion amount is scheduled to drop to pre-2018 levels. In other words, if the taxpayer uses the "extra" basic exclusion amount before it expires (by making lifetime gifts), it will not be "clawed back" to cause additional tax if the taxpayer dies after the basic exclusion amount is reduced in 2026. Therefore, it is a "use it or lose it" type of benefit, and the taxpayer who makes use of the additional basic exclusion amount prior to 2026 will lock in the benefit of the extra basic exclusion amount.

As a result of the current legislative uncertainty and future "sunsetting" of the increased basic exclusion amount, high-net-worth individuals and families should consider utilizing currently available estate planning techniques, such as making gifts or sales to grantor trusts, to maximize their applicable federal gift, estate, and generation-skipping transfer tax exemptions.



JB HAPPENINGS

Congratulations to ***Collins Hunsaker***, who celebrated ***10 years*** with Jeffrey Burr and was recently named Managing Attorney for the firm. Collins graduated from BYU with a degree in Political Science. He went on to earn his JD from Chapman University School of Law and later obtained a Master of Laws in Taxation (LL.M.). Collins' primary focus is estate planning, asset protection and tax, handling some of the more complex estate planning matters for our high-end clients.

Corey Schmutz also celebrated ***10 years*** with the firm. Corey attended UNLV and earned a degree in Finance. He went on to earn his Juris Doctorate (J.D.) from the William S. Boyd School of Law and his Master of Laws in Taxation (LL.M.) from the University of San Diego School of Law. Corey is the head of the Probate Department and practices in the areas of Probate and Estate Planning.

ONE... TWO... THREE... TRUST

With the removal of those mandatory split provisions from the trust, the surviving spouse can avoid a complex trust administration and simply continue to manage and control the trust property.

We continue to meet with clients who still utilize what's called a Two Trust or an AB trust. Back in its day, having an AB Trust allowed married couples to essentially double the amount that could be passed to the next generation by preserving the 1st spouse's exemption at their death and allowing an additional exemption at the 2nd spouse's passing. Unfortunately, the technique was only available through the use of a complicated "AB trust" which generally had to be prepared by an attorney to be effective.

That all changed when Congress passed legislation called "portability," allowing a surviving spouse the right to use a deceased spouse's unused exemption even if it wasn't placed in an exempt trust. In addition, the lifetime exemption amount has increased dramatically in recent years and continues to increase with inflation every year, which allows for simpler and more cost-effective estate planning. Because of portability and the increase in the exemption amounts, many AB trusts are no longer necessary.

With an AB Trust, the splitting of the first trust requires a trust administration at the first spouse's death, which may be costly and time consuming as an inventory of trust assets must be done, property must be appraised and valued, and allocations between sub-trusts need to be made. Now, because of portability and the current high exemption amount, the requirement that a surviving spouse make that allocation is sometimes unnecessary and economically impractical, and the surviving spouse can avoid a complex trust administration and simply continue to manage and control the trust property.

On the other hand, although splitting the trust in the first death may no longer be needed for tax purposes, it may still be advisable in the case of a second marriage or when spouses have different remainder beneficiaries.

We recommend that if your trust has a mandatory split provision that you have your plan reviewed. Changes in your family circumstances such as the birth, death, marriage or divorce of a child can also have an impact on your estate planning. Trustees selected may no longer be available or be a preferred choice.

External changes such as changes in the tax laws, changes in state law, and possible additions or deletions of your assets are all reasons to revisit your trust to make sure that your planning is comprehensive. For all of the above reasons, your estate plan should be reviewed every 2-3 years.

In addition, a review may be necessary to ensure that any additional assets you may have acquired have been accurately transferred into the Trust and that your Trust is properly funded. An important element of your plan is the completion of your Asset Inventory; this inventory should accurately reflect all of your current Trust assets.

If you haven't reviewed your estate plan in recent years, it may be time for a review. Call our office to schedule a consultation with one of our estate planning attorneys.