

# Biden Proposes Numerous Tax Increases

By Robert W. Wood

We already have inflation, but if the Biden administration gets its wish, we will have major tax increases too. President Biden's 2023 budget is full of planned tax hikes.

These proposals have not yet become law, but here's what is in store for you if the administration's raft of ambitious tax hikes becomes law the way the administration hopes. First, the President wants to increase top tax rates for individuals. The top bracket for individuals was 39.6% for many years, until Trump and a cooperative Congress lowered it to 37% starting in 2018.

But President Biden wants it back up, from 37% to 39.6%. The 2.6% rate hike would kick in at \$450k for joint filers and \$400k for single taxpayers. Next, he wants to make some capital gains taxed as ordinary income, if you make over \$1M. How about long-term capital gains? Currently, the highest capital gain rate is 20%, but you must add the 3.8% Obamacare tax. So that makes the total 23.8%, which is still vastly better than 37% or 39.6%.

However, one of the President's proposals is to tax long term capital gains and qualified dividends as ordinary income if your taxable income exceeds \$1m. If you make a big gain, having a rate jump from 23.8% to 39.6% is going to hurt. Of course, most people have to add their state income tax on top of that, such as California's 13.3%.

But here's an even bigger change—a real sea change when it comes to your taxes. Biden has proposed repealing step-up in basis on death. Under present law, inherited property receives a full fair market value tax basis on death. The step-up in basis provides tax benefits for everyone passing down appreciated assets, including real estate, stock, family companies and more. Assets held at death receive a stepped-up basis to market value when you die. Small businesses count on this.

Say you have a family business worth \$20 million that you started from scratch. How is it taxed if the married couple dies? Right now, the business goes free of estate tax to the kids. If both parents die, the \$24 million estate tax exemption should mean no estate tax for that \$20 million business. And the business gets a step-up in basis for income taxes too.

Suppose that mom and dad die, and junior gets the stock in the family company. No matter how small mom and dad's tax basis was in the stock, the stock gets stepped up to market value on death, \$20 million. That way, junior can run the business, or can sell it for \$20 million and should pay no income tax. Junior may try running the business for a year or two—it might even be worth \$22 million then—but if he sells it, he has that \$20 million date of death value basis.

With a step up in basis, your heirs can sell property they inherit and not have to pay income tax on the increase in value during the decedent's life. That long coveted step up in basis would go away under the Biden administration's plan. There would be a \$5m exclusion from gain on property transferred by gift, and this would be cumulative. But once you use that up, step in basis would be gone.

Biden wants to kill 1031 exchanges too. Tax free swaps of real estate are everyman's tax planning, and you can keep on swapping for decades without cashing out. But now Biden wants to repeal it. The proposal would only leave in place a limited 1031 deferral provision that would allow deferral of gain from like-kind exchanges up to \$500k on a single tax return or up to \$1m for joint filers each year.

Beyond those figures, though, 1031 would be dead. If lobbyists are working hard to keep carried interest tax perk, that's certainly true with 1031 too. The real estate industry at large and the 1031 industry have a lot of power to wield. Biden's next plan won't hit too many people, but it's still a fundamental change to our tax system.

The President's proposal is a 20% minimum tax if you have \$100M in assets—not income, but assets. Oddly enough this proposal is one he calls the 'Billionaire's tax.' It's an odd name, since it applies to everyone having a *tenth* of a billion dollars. The misnamed Billionaire's tax would slap a minimum 20% tax on all 'income,' another term that is being expanded radically to include *unrealized* gains.

In essence, it is a wealth tax for people with net worth greater than \$100M. Say you have highly volatile assets like crypto, that go up and down in value. Even if you don't sell, that value would be taxed. The proposed law includes a requirement to report all assets and your basis to IRS annually. The provision is complex, and this only scratches the surface.

The sea change, though, would be to tax just a rise in value, with no triggering event, no sale, no nothing. Talk about radical. It sounds a little like property tax, where the value of your property is assessed. But, however you look at it, this one is scary, even if most of us are never going to get close to \$100M.

The President also wants to tax carried interests (in partnerships and LLCs) as ordinary income. Carried interests, which are currently taxed as capital gain, have been on the chopping block a few times in the past. This enormous tax perk has been stridently defended by hedge funds, private equity funds, and others. There is a lot of money behind that capital gain tax preference, but on technical grounds it is a little hard to justify. So far, every time Congress has gone after it, they have been stopped in their tracks, so perhaps that will happen again here.

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