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House advances the Build Back Better Act: What could it mean for you?

November 19, 2021

Key takeaways:

- On November 19, 2021, the Democratic-led House of Representatives passed the Build Back Better (BBB) Act, a broad $1.75 trillion bill focused on addressing climate change, education, poverty, health care, and other priorities.
- The House-passed BBB also includes tax increases and tax changes that are applicable to businesses, high income individuals, and individuals with higher-balance retirement-investment accounts.
- The BBB debate will now continue in the Senate, where the details of the legislation is likely to change.

What this may mean for you:

- Continue to make decisions to achieve your long-term financial goals and objectives and consult with your advisor to better understand how this legislation may affect your family, business, and overall financial picture.

What tax changes are "in" the bill today and what's "out" (for now)?

With the Infrastructure Investment and Jobs Act (aka the Bipartisan Infrastructure Framework) signed into law, the focus has turned to the President's "Human Infrastructure" programs. After months of negotiations and debate, the Democratic-led House of Representatives advanced the Build Back Better (BBB) Act to the Senate.

The chart below is a snapshot that shows how the tax provisions have evolved since the House Ways and Means Committee initially considered Build Back Better Act in September. The spending and tax provisions of the BBB are both expected to continue to evolve in the Senate.

	Build Back Better Act: September 2021	**Build Back Better Act – passed by the House in November 2021**
Individual income tax rates	Increase highest individual income tax rate to 39.6%	Removed
Capital gains tax rate	Increase long-term capital gains tax rate to 25% effective September 13, 2021	Removed
Qualified business income deduction	Provide a maximum allowable qualified business income deduction for individuals, estates, and trusts	Removed
Net investment income tax (NIIT)	Apply the 3.8% NIIT to trade or business income for individual taxpayers with adjusted gross income (AGI) greater than $400,000	Remains in the Build Back Better Act
Excess business losses	Makes permanent the limitation on excess business losses from the Tax Cuts and Jobs Act (TCJA) of 2017	Remains in the Build Back Better Act
Surcharge on high income earners	Apply a 3% surcharge on taxpayers with AGI greater than $5,000,000	Apply a 5% surcharge on modified adjusted gross income (MAGI) in excess of $10,000,000 and an additional 3% on MAGI of $25,000,000
State and local tax deduction	No change to the state and local tax deduction	For years starting after 2020, the limitation for the state and local tax deduction increased to $80,000 through 2030
Lifetime federal tax exemption	Accelerate the sunset of the TCJA Provision for estate tax from 2026 to 2022	Removed
Grantor trusts	Changes to grantor trust rules that would have impacted estate planning changes	Removed
Contributions to Traditional and Roth IRAs	At certain income thresholds, no further contributions to a Roth or Traditional IRA if the total value of IRAs and defined contribution retirement accounts exceeds $10,000,000	Remains in the Build Back Better Act
Required minimum distributions from IRAs	At certain income thresholds with IRA balances greater than $10,000,000, a required minimum distribution of 50% of the amount above $10,000,000 and 100% of the amount greater than $20,000,000	Remains in the Build Back Better Act

Roth IRA Conversions	At certain income thresholds, starting in 2032, Roth conversions prohibited from traditional IRAs or certain employer sponsored plans.	Remains in the Build Back Better Act
Back Door Roth IRA conversions	Effective January 1, 2022, Roth conversions including after-tax contributions from traditional IRAs or employer sponsored plans prohibited	Remains in the Build Back Better Act
Qualified small business stock deduction	At certain income levels, elimination of the 75% and 100% capital gain deduction for qualified small business stock	Remains in the Build Back Better Act

What are the next steps?

The House passage is just one step in the process, with this bill now moving to the Senate where the provisions are anticipated to evolve. Given the slim Democratic majority in the Senate, it is unclear what the changes will be, and when the Senate will take up the vote. Should the Senate pass the bill, reconciliation between the House and Senate versions will be required. Furthermore, if the Senate does not take up the vote in December, the reconciliation process will start over again.

What actions should I consider taking?

In this fast-changing environment, with little time before year-end, be thoughtful as to what steps to take. Evaluate what traditional year-end tax planning activities may be appropriate for your situation:

- Consider capital loss harvesting, charitable contributions, and annual exclusion gifts
- If gifting strategies were recently started, consider whether they still achieve your goals and objectives. If so, continue the strategy. If you are not sure, take the additional time to have a thoughtful conversation with your advisors.
- Do not wait too long as these provisions could either return or will naturally occur (for example, the estate tax sunset will still change in 2026).

Consult with your advisor to better understand how this legislation may affect your family, business, and overall financial picture. As changes could happen quickly with final passage potentially occurring towards year-end, it is best to have dual-track plans of action depending upon the result.

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