

Estate Planning Current Developments

December 2021

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Introduction

This summary reflects estate planning developments in 2020 - 2021 (including various legislative developments and legislative proposals). It includes observations from presentations at the 54th Annual Heckerling Institute on Estate Planning, which was held virtually May 3-6, 2021.

1. Summary of Top Developments in 2020

Ron Aucutt (Lakewood Ranch, Florida) lists the following as his top ten developments in 2020 in his report, "Top Ten" Estate Planning and Estate Tax Developments of 2020 (January 2021) found [here](#) and available at www.bessemertrust.com/for-professional-partners/advisor-insights:

- (1) Social disruption and refocus: Health and racial justice;
- (2) The 2020 election;
- (3) Increasing confirmation of solutions to defined value clause dilemmas;
- (4) Valuation of interests in entities (*Grieve, Nelson*) (see Item 29 below);
- (5) Deductibility of estate and trust administration expenses (Reg. §§1.67-4, 1.642(h)-(2)) (see Item 7.b.-c below);
- (6) Crunch time for syndicated conservation easements (see Item 38 below);
- (7) Section 2703 substantial modification rules applied (PLR 202014006);
- (8) Revenue Ruling 85-13 applied to transfers between trusts (PLR 202022002) (see Item 24.d below);
- (9) Assignment of income avoided on charitable donation of stock (*Dickinson*) (see Item 30 below); and
- (10) Hazards of death-bed planning and of post-opinion analysis (*Moore*) (see Item 27 below).

2. Legislative Developments

- a. **CARES Act.** The Coronavirus Aid, Relief and Economic Security (CARES) Act (P.L. 116-136, 3/27/2020) provided for direct stimulus payments for taxpayers with adjusted gross income up to \$99,000 (\$198,000 for joint return taxpayers) and also included a number of tax-related provisions for 2020, including:
 - Extension of the deadline in 2020 for making contributions to a traditional or Roth IRA to July 15, 2020;
 - Waiver of required minimum distributions (RMDs) for all retirement accounts except defined benefit accounts in 2020 (this included IRAs, even inherited IRAs) and for deferred 2019 RMDs due April 1, 2020;
 - Qualified taxpayers could take a "coronavirus-related distribution" of up to \$100,000 in 2020 and avoid the 10% penalty for early distributions;
 - Relaxed borrowing provisions from 401(k) or retirement plans (but not IRAs);
 - \$300 Above-The-Line charitable deduction (the staff of the Joint Committee on Taxation interpreted this provision as being \$300 for both individuals and joint return filers); Increased limit for deducting cash contributions to public charities in 2020 from 60% to 100% of the individual's "contribution base" (but not applicable to contributions to donor advised funds, supporting organizations, or private foundations other than operating foundations or "flow-through" foundations); and
 - Increased corporate charitable deduction limit from 10% to 25% of taxable income for 2020.

For a discussion of these provisions, see Item 2.I. of Estate Planning Current Developments and Hot Topics (May 2021) found [here](#) and available at www.bessemertrust.com/for-professional-partners/advisor-insights.

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- b. **Consolidated Appropriations Act, 2021.** The Consolidated Appropriations Act, 2021 was enacted on December 27, 2020. It includes the COVID-related Tax Relief Act of 2020, which (among many other things) clarifies the tax treatment of PPP loans, and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 that extends or makes permanent numerous tax provisions. At 5,593 pages, it is the longest legislation ever passed by Congress.

Tax provisions include:

- (i) an extension (and expansion) of the \$300 non-itemizer charitable deduction (\$600 for joint returns) for 2021; Professor Sam Donaldson says this is an additional itemized deduction in addition to the standard deduction rather than an adjustment in arriving at adjusted gross income (as it was in 2020);
- (ii) an extension of the 100% of AGI limit for cash contributions to public charities (but not donor advised funds, supporting organizations, or private non-operating foundations) for 2021 (for both 2020 and 2021, an individual must make an affirmative election on Form 1040, Schedule A, Line 11 by entering the amount of qualified contributions on the dotted line next to the Line 11 entry space) (in computing the charitable deduction, apply the AGI limits first to current year charitable contributions that do not qualify for the 100% of AGI and then to carryover contributions within each category);
- (iii) an extension of the increase of the corporate charitable deduction to 25% of taxable income for 2021;
- (iv) a permanent increase of the \$6662 penalty for overstating qualified charitable contributions from 20% to 50%;
- (v) a permanent extension of the reduction of the medical expense deduction floor from 10% to 7.5%; and
- (vi) the addition of a 100% deduction for business meals, including delivery and carryout meals, provided by a restaurant for amounts paid or incurred in 2021 or 2022.

For further discussion of the Consolidated Appropriations Act of 2021, see Item 2.m. of Estate Planning Current Developments and Hot Topics (May 2021) found [here](https://www.bessemertrust.com/for-professional-partners/advisor-insights) and available at www.bessemertrust.com/for-professional-partners/advisor-insights.

- c. **American Rescue Plan.** The American Rescue Plan is a \$1.9 trillion coronavirus rescue package passed under the reconciliation legislative process, signed by the President on March 11, 2021. The legislation includes a wide variety of relief measures, including stimulus checks, vaccinations and testing funding, state and local aid, unemployment insurance, minimum wage, and paid leave provisions. It also includes expanding the child tax credit (for 2021 only, a refundable credit of \$3,000 for each child ages 6 – 17 and \$3,600 for each child under age 6 for couples who make \$150,000 or less and single parents who make \$112,500 or less) and the earned income tax credit (some provisions apply for 2021 only but other modifications of the EITC are permanent). See Rev. Proc. 2021-23 adjusted tables for those credits and the premium tax credit.
- d. **Democratic Sweep.** The sweep of the White House, Senate and House of Representative by Democrats in the 2020 elections (and the Georgia Senate run-off elections) has changed the calculus of anticipated tax legislation, including legislation relating to the transfer tax. Tax legislation including some of the tax proposals from the Biden campaign appears much more likely than if Republicans controlled the House or Senate, but significant tax increases will likely have to be enacted through the reconciliation process so that only a majority of the Senate is required (see Item 2.n below). Sweeping changes will likely still be difficult, even using reconciliation, considering the 50-50 division of the Senate and the practical requirement that every (or perhaps almost every) Democratic senator agree to the change (see Item 2.p(2)-(3) below).
- e. **The American Jobs Plan and The Made in America Tax Plan Proposal.** The centerpiece of an expansive infrastructure proposal is The American Jobs Plan, released March 31, 2021. Alongside the infrastructure plan is The Made in America Tax Plan with proposed changes to the corporate tax code. Among other things, the corporate tax plan would increase the corporate tax rate from 21% to 28% (still less than the 35% rate that applied before the 2017 Tax Act), adopt various provisions to

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