



Tax Policy

FLA's engagement on broad tax policy is through two tax specific coalitions:

- American Family Business Coalition
- 1031 Tax Exchange Coalition

Through these coalition, FLA is attending virtual meetings and signing onto coalition letters to Congressional leaders. We are also engaging our SET to GO teams by keeping them informed of tax policy and preparing them to engage by telling their story on how various changes in the tax code will impact their ability to own and manage forests for domestic timber supply as well as the environmental co-benefits.

We have had 13 meetings with Congressional Staff on the 1031 and other tax proposals.

May 29th, Real Estate Like-Kind Exchange Congressional Briefing with 30 Congressional staff from the Senate Finance Committee, House Ways and Means Committee, agriculture committees, and personal offices.

Biden Tax Proposals and Timelines

March 31: To pay for the President's *American Job Plan (Infrastructure package)*, the White House on March 31 released the President's *Made in America Tax Plan* proposal to increase the corporate tax rate and change US international tax rules.

April 28: To pay for his *American Families Plan (education, childcare and families package)*, President Biden proposes rolling back several individual tax cut provisions of the 2017 tax reform act (the 2017 Act) for individuals with income above \$400,000. The White House on April 28 released a summary of specific proposals to increase taxes for higher-income individuals.

May 28: US Treasury released the **Green Book**, which outlines the specific tax provisions that the Administration seeks to enact this year. The Green Book is

essentially the “General Explanations of the Administration’s Fiscal Year 2022 Revenue Proposals” and includes detailed legislative explanations for the tax proposals.

Until actual legislation is introduced, and we can see the language of the proposed bills, the Fiscal Year 2022 budget and the Treasury’s Green Book provide insight beyond the outlines of the *American Jobs Plan* and the *American Families Plan* of what those proposals might look like and possible effective dates.

What We Know from The Green Book

- Proposed **individual tax increases** being proposed would be effective for tax years beginning on or after Jan. 1, 2022.
- Proposed **corporate tax rate increase**, for fiscal-year corporations the budget proposes to prorate the tax increase to the portion of the tax year beginning on Jan. 1, 2022.
- Proposed **capital gains rate increase**, the budget proposes a retroactive effective date back to the date the proposed increase was announced, which has been interpreted as the date on which the American Families Plan was announced, April 28, 2021.
- Proposed elimination of the **step-up in basis** at the death of a taxpayer.
- Administration is **contemplating the income taxation of capital gains at death**, subject to a \$1 million-per-person exclusion, indexed for inflation after 2022.
 - *For certain family-owned businesses, including farms, the tax would not be due until the family-owned business is sold or otherwise ceases to be family-owned.*
- Limiting IRC Section **1031 exchanges** proposal would allow the deferral of gain up to an aggregate amount of \$500,000 for each taxpayer (\$1m for married individuals filing a joint return) each year for like-kind exchanges of real property. Any gains from like-kind exchanges exceeding \$500,000 (or \$1m in the case of married individuals filing a joint return) during a tax year would be recognized by the taxpayer in the year the taxpayer transfers the real property subject to the exchange. The proposal would be effective for exchanges completed in tax years beginning after December 31, 2021.
 - *Green Book does not make clear if this would apply to corporations, partnerships and S corporations.*
 - *In federal taxation, the terms "taxpayer" and "person" can be read to include corporations, S corporations and partnerships, which would mean that each entity only gets \$500,000 — regardless of the number of owners.*

Thus, a family partnership with two parents and three children as partners would get a \$500,000 exclusion. If they distributed the real property in-kind, however, each of them would have the potential for the \$500,000 cap for a total of \$2.5m, assuming the "held for" requirement under IRC Section 1031 were satisfied.

- Other provisions that President Biden had mentioned during the campaign, including reducing the estate and gift tax exemption amount and raising the estate and gift tax rate, are not addressed in either the budget or the Green Book.

Status of Policy and Legislation

The timing of proposed tax legislative changes remains uncertain, but legislative action appears likely before the end of 2021. Key House and Senate Democrats, including House Ways and Means Chairman Richard Neal (D-MA) and Senate Finance Committee Chairman Ron Wyden (D-OR), are expected to offer their own tax proposals as well.

Critical decisions for President Biden and Congressional Democrats include whether to attempt first to reach a bipartisan agreement on a smaller infrastructure package, and then seek to enact the President's broader spending measures and tax increase proposals later this year with only Democratic votes using budget reconciliation procedures.

Related Tax Legislation Introduced

March 31: The Sensible Taxation and Equity Promotion (STEP) Act, introduced by U.S. Sen. Chris Van Hollen (D-Md.), along with Senators Cory Booker (D-N.J.), Bernie Sanders (I-Vt.), Sheldon Whitehouse (D-R.I.) and Elizabeth Warren (D-Mass.)

Allows individuals to exclude up to \$1 million in unrealized capital gains from tax, as well as to pay the tax in installments over a 15-year period for capital gains that apply to any illiquid asset like a farm or business. Changes would be retroactive to January 2021.

This would have two impacts on family forest owners if passed as currently understood. First, removing the automatic step-up in basis provisions at the time of death creating the potential for more tax. Second, a new transfer tax instituted in

the STEP Act would apply to transfers of property in a forest estate at death and transfers during a lifetime.

March 25: For the 99.5 Act” targeting family businesses, introduced by Sen. Bernie Sanders (I-VT)

Would require more estates to pay estate tax by lowering the estate tax exemption level and would increase the estate tax rates resulting in larger amounts of estate tax to be paid.

March 9: Death Tax Repeal Act, introduced by Senator John Thune (R-SD) and Congressman Jason Smith (R-MO-8). This legislation would permanently repeal the federal estate tax and generation skipping tax.

