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Get me a rewrite!

The tax elements of the Build Back Better legislation have been evolving at a rapid clip. The President proposed a new framework in October, which was followed by a massive rewrite of the bill to satisfy centrist Democrats in early November. Some 782 pages of the original bill were cut, and 530 of the axed pages were from the Ways and Means section. Nothing is final as of this writing, but of special interest to estate planners in the current draft:

- the acceleration of the reduction in the unified transfer tax credit is dropped;
- rewrite of the grantor trust tax treatment is omitted;
- still no sign of the repeal of basis step-up at death;
- the $14 billion revenue raiser from changes to the carried interest rule has gone missing;
- the idea for a tax on the unrealized capital gains of billionaires came and went; and
- the cap on the SALT deduction would be lifted from the current $10,000 to $72,500.

There is considerable resistance from some Democrats over the lifting of the SALT cap, as most of the tax benefits would go to the highest-income Americans. Senator Bernie Sanders said, “At a time of massive income and wealth inequality, the last thing we should be doing is giving more tax breaks to the very rich.” Repealing the SALT cap would lose $85 billion annually in federal tax revenue. According to CFRB.org, the top 1% of taxpayers would get an average $35,660 tax break, while those in the 90%-99% group would get an average of $2,480. Those not in the top 10% of taxpayers would get less than $400 on average—many of those do not itemize, so the cap really has no effect on them.

Abandoning the proposed increase in the top individual tax rate to 39.6% had very little revenue effect, because that is already scheduled to happen in 2026. Preserving the 21% corporate tax rate, on the other hand, sacrifices an expected $540 billion that raising the rate to 26.5% would have collected. That loss is offset by the creation, beginning in 2023, of a corporate minimum tax on financial statement income for companies with more than $1 billion of such income, expected to raise $325 billion over ten years.

The current draft includes a 5% surtax on income over $5 million and 8% above $25 million. Those new brackets kick in at markedly lower levels for estates and trusts, $200,000 for the 5% surtax and $500,000 for the 8% surtax. The tax applies after allowing for distribution deductions, so that trusts that do not accumulate income would generally not be affected.