

TAX

# Rushed tax moves? No regrets for these investors or advisors

By [Lynnley Browning](#) December 02, 2021, 7:51 p.m. EST 6 Min Read

Wealth advisors strive to maximize investment returns for their clients by staying one step ahead of shifts in tax laws. So what happens when they charge out of the gate with pre-emptive financial moves — sell appreciated stock, offload a business, transfer assets — that later turn out [not to have been necessary](#)?

There can be a [fine line](#) between offensive blocking to ward off potential threats to a retirement portfolio and scrambling to shore things up once new laws actually emerge.

Which is why, as proposals for tax increases on the wealthy have [gyrated wildly](#) ever since the Biden administration laid out its now-scaled-back vision last April, some advisors have tweaked the wealth management industry's traditional approach. Think of it as taking the slow and steady method while building a retirement and estate plan with escape chutes, all while hoping for the best, expecting the worst and not being surprised when either result ensues.

"My philosophy is, keep planning, but make sure you plan with flexibility," said estate planner David Pratt, the chair of the private client services department and head of the Boca Raton office at law firm Proskauer Rose.

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The \$1.8 trillion tax and spending [bill](#) known as Build Back Better that was passed by the House of Representatives on Nov. 19 bears little resemblance to [earlier proposals](#) by Democrats and the Biden administration for steep tax hikes on the wealthy. Nevertheless, advisors and their clients spent much of last spring, summer and early fall convinced that bad things were coming, especially as the administration had spoken repeatedly of raising taxes on the rich, a core pledge of President Joe Biden's presidential campaign.

The most dramatic proposals that fell by the wayside were for higher capital gains and ordinary rates, a top capital gains rate equal to a higher ordinary rate for the wealthiest, a 50% reduction of estate tax exemption levels, [elimination](#) of the ability to pass on untaxed appreciation to heirs and the effective end to a common type of trusts. None of those big changes were included in the Build Back Better [bill](#) now before the Senate.



It's unclear how the proposed tax increases making their way through Congress will finally shake out. *lars\_nilsen for Pixabay*

Still, it's deja vu all over again: No one knows what the bill will look like after the Senate makes its own revisions before it heads to Biden's desk for signature. "At the end of the day, my crystal ball has COVID and is on a respirator," Pratt said. "Nobody knows what's going to happen."

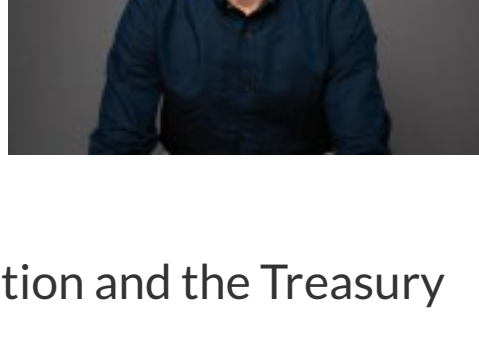
In the months before the most recent legislation emerged, some advisors saw their clients make investing and estate planning decisions that assumed those proposals would become the law. "There was a lot of interest in getting in front of tax increases, and a fever pitch before the House introduced its version of the bill on Sept. 12," said Dustin Stamper, the head of tax legislative affairs for accounting and advisory firm Grant Thornton in Washington, D.C. "Trying to hedge against real risk is prudent — you have to understand the cost to acting and not acting."

Jon Ekoniak, a certified financial planner and partner at Bordeaux Wealth Advisors, an independent advisory firm in Menlo Park, California, cited a client in his mid-80s who had already used up around \$4 million of his \$11.7 million estate tax exemption, the current level at which assets passed on to heirs don't bear the 40% estate tax. He thus had roughly \$7 million that he still needed to move out of his estate to avoid the tax.

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The client began to worry last April and May when the Biden administration and the Treasury Department [proposed](#) ending two tax benefits for assets transferred to heirs. The first proposal would have cut the estate exemption in half, to roughly \$6 million (when indexed for inflation) come 2022, instead of 2026 as now scheduled. The second proposal would have ended the longstanding ability of heirs to inherit assets without their appreciation in value bearing capital gains taxes. Under the latter proposal, a house bought by a parent 40 years ago for \$100,000 that's now worth \$1 million would have been taxed on its \$900,000 in appreciation over four decades.

Ekoniak said that his client decided this summer to give his three children a total of \$6 million from his brokerage accounts, an amount that would have put him right below what he thought would surely become the lower exemption.

Exemption levels, of course, didn't change. Did the client have regrets about his move? Ekoniak said no, because the client was eventually going to make those gifts anyway. "When things are in flux, people feel like they need to take action," he said. "The question we ask is, 'Is this supporting the client's goals and objectives?'" In this case, he said, the moves were, and the client said, "sure, let's go ahead and accelerate it."

Emily Smith, the director of financial planning at Williams Jones Wealth Management, a \$10.2 billion investment advisory firm in New York, said that when the administration's proposals to halve estate tax exemption levels emerged last spring, she began meeting with clients to game out their cash flow needs.

"We would model out scenarios," she said. She cited one married couple who "couldn't afford to give away their full exemption" (currently \$23.4 million for a married couple, and half that if the proposal had moved forward) but still wanted to get some assets out of their roughly \$18 million estate, just to be sure. The clients ended up putting \$4 million into a trust that benefits one spouse but from which the other spouse could still benefit, too. The trust, a spousal lifetime access trust, or [SLAT](#), is not included in the non-donor spouse's taxable estate. "It takes serious consideration to part with (use up) the lifetime exemptions," Smith said, adding that the trust move helped the clients "get their feet wet" with reducing their exposure to the 40% estate tax.

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Patrick Hicks, an estate planning lawyer who is the head of legal operations at Trust & Will, a digital estate planning company in San Diego, said he knew of several people who had rushed to sell their real estate holdings last summer amid the prospect of higher capital gains rates.

Biden's American Families Plan originally proposed raising the top ordinary rate to 39.6% and subjecting earners with more than \$1 million in income to that same rate on their long-term capital gains, meaning assets sold after at least one year. Including that plan's proposal to tack on the 3.8% Medicare surtax to that rate, such earners would thus have paid a total capital gains rate of 43.4%, compared to 23.8% today. In September, House Democrats proposed a 28.8% rate.

"People are already trying to time the market; now they're trying to time tax increases," Hicks said.

In recent weeks, Hicks said that some clients who had transferred money into SLATs in anticipation of higher taxes had asked if their pre-emptive moves were a good idea. His answer: "We prepared for the worst. We've gone through a fire drill. It was a low-risk move."

Proskauer's Pratt, who has seen multiple tax law changes for his high net worth clients over nearly three decades, said that certain early-strike moves for wealthy individuals are usually the right thing to do: "If it (a tax increase) doesn't happen, no foul. Better to be safe than sorry."

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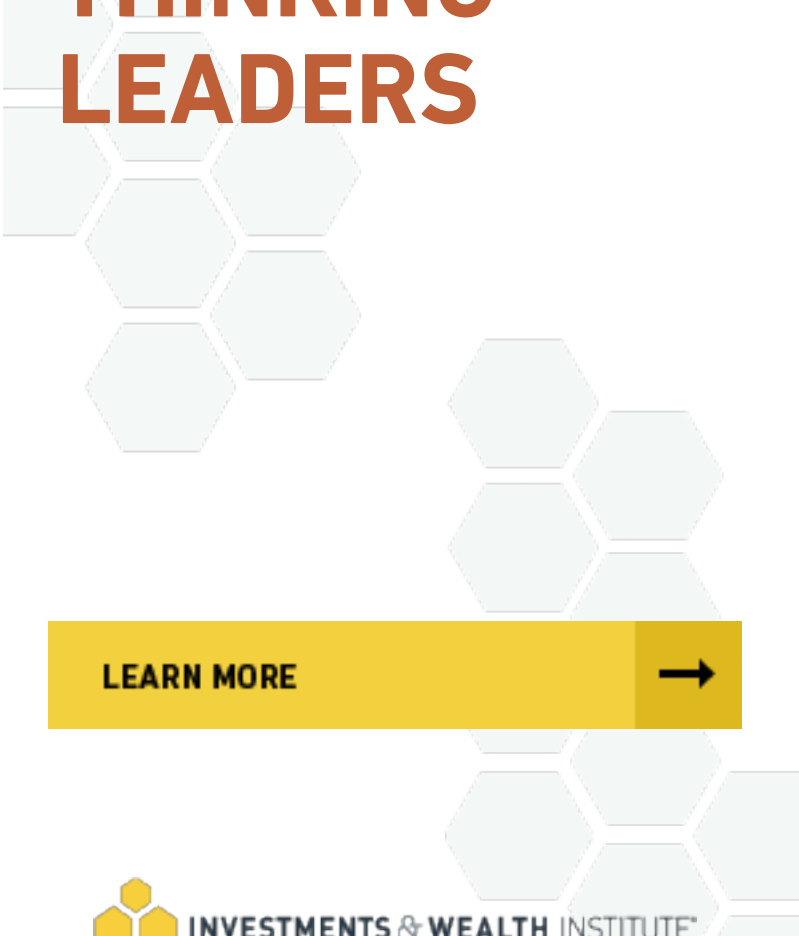
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