



## **THE BIDEN EFFECT ON ESTATE PLANNING**

### *What You and Your Family Need to Know*

Joe Biden has been inaugurated as the 46<sup>th</sup> President of the United States. Though Biden has provided limited specific information on proposed changes to the federal estate and gift tax exemptions and taxation of assets following death, his goal in this area is clear – to provide more tax revenue for the government. As a result, there may be a limited amount of time for families to review and modify their estate plan to take advantage of the current favorable tax environment.

### **Biden Tax Plan**

- The federal estate and gift tax exemption amounts currently stand at \$12.9M per individual for 2023. However, the legislation that created these large exemption amounts is set to expire on December 31, 2025, with the exemption amounts being cut in half. With Biden in office and the Democrats gaining control of Congress, it is very unlikely that this legislation is extended and the expiration date may very well be moved up.
- In addition, the Tax Policy Center has stated that Biden ultimately wants to reduce the federal estate and gift tax exemption amounts to \$3.5M and \$1M, respectively.
- Biden has also indicated that he may eliminate the step-up in basis that occurs when an asset is passed to heirs upon death. Under current law, inherited assets are assigned a basis equal to the fair market value at the time of death of the decedent. As a result, if such assets are sold at or near the time of death, there may be zero tax implications. If the step-up in basis is eliminated, all unrealized appreciation on a decedent's assets would be subject to tax on the subsequent disposition of such assets by the decedent's estate or beneficiaries.

### **Estate Planning Considerations**

- **Creation of Dynasty Trust.** In general, dynasty trusts are long-term trusts designed to pass wealth from one generation to the next without incurring additional estate taxation. With the federal estate tax exemption amount at \$12.9M per person, many families had little concern about federal estate taxation at death. Should that drop to \$3.5M, a much larger segment of the population will be affected. Without proper dynasty trust planning, assets that could escape the 40% (and rising?) federal estate tax rate could be vulnerable.
- **Use of Current Lifetime Gift Tax Exemption.** As mentioned above, the current large gift tax exemption amount may be going the way of the dinosaur. However, the IRS has issued “anti-clawback” regulations, confirming that individuals will be able to use current gift tax exemption amounts and not be penalized if the exemption is reduced in the future. **There are numerous estate planning options designed to take advantage of today's gift tax exemption amount**, so please consult with your estate planning professional.