

ESTATE TAX – CURRENT LAW, 2026, BIDEN TAX PROPOSAL

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With the advent of the [Tax Cuts and Jobs Act of 2017](#), the estate, gift, and generation skipping tax exemptions increased dramatically but these changes were only temporary. With the Biden administration now in place and at least some Democratic control of the senate, there is added uncertainty that should be evaluated soon. It is important that taxpayers with estates exceeding \$3.5 Million (per person), review their estate planning now to avoid the chaos we saw last fall.

CURRENT LAW

As of 2021, the exemption stands at \$11,700,000 (per person) and is expected to increase each year based upon the U.S. Bureau of Labor Statistics' Consumer Price Index. The exemption is unlimited on bequests to a surviving spouse.

Under current law, the estate tax on a net taxable estate of \$11,700,000 will be zero. Net taxable estate refers to the value of the estate on the decedent's date of death, after expenses of administration and deductions, and bequests to a surviving spouse.

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If a decedent were to die in 2021, with an estate of \$11,700,000 there would be zero tax due on the estate and a full step up in tax basis on all assets to the value on the decedent's date of death.

2026

Under the current tax law, the higher estate and gift tax exemption will "Sunset" on December 31, 2025. Starting January 1, 2026, the exemption will return to \$5.49 million adjusted for inflation. With inflation, this may land somewhere around \$6 million.

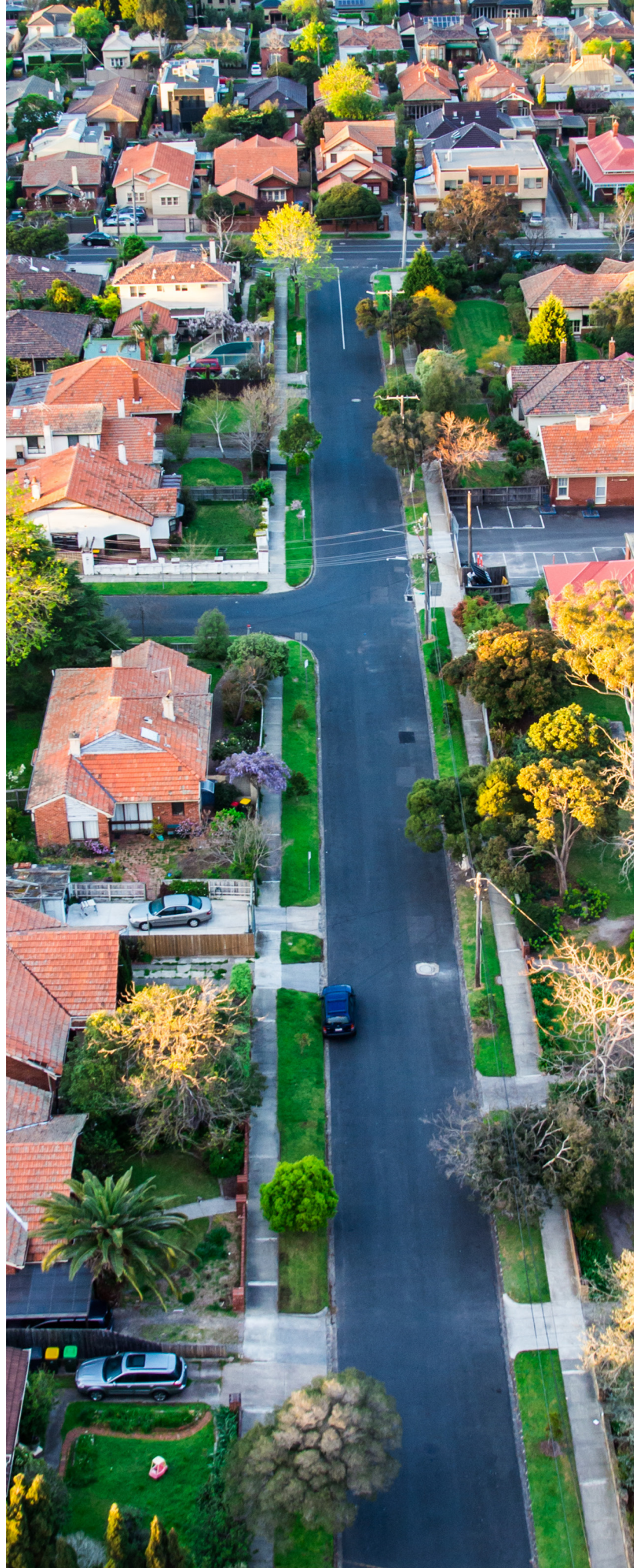
If a decedent dies in 2026, with an estate of \$11,700,000, the exemption amount would be approximately \$6,000,000, creating a TAXABLE estate of \$5,700,000 and an estate tax in the amount of \$2,280,000.

BIDEN TAX PROPOSAL

There may be a new wrinkle if the current Administration were able to pass tax legislation prior to the Sunset provision. President Biden's plans were laid out for all to see during his campaign last year. But the consensus was that the President would not be able to implement much of his agenda because Republicans in the Senate were going to block most of his tax proposals. But now that Democrats control both the House and the Senate for at least the next two years, Biden's tax plans have taken on new life.

If this occurs, and his plans to reduce the exemption to \$3,500,000 with an increased maximum tax rate of 45% are passed, it could add an additional \$1,410,000 in Estate Tax assessments, meaning \$3,690,000 would be due nine months after the date of death on an estate of \$11,700,000 and it could be effective long before the December 31, 2025 Sunset date.

More importantly, smaller taxable estates of over \$3,500,000 may then be subject to estate tax. A taxable estate of \$6,000,000 would carry no estate tax even after the Sunset date under the current law, but if the law is changed to include Biden's campaign proposals, that \$6,000,000 estate could be subject to approximately \$1,125,000 in estate taxes.



Single Individual	Current Law	2026 Sunset Provision	Biden Proposal
Estate Value	11,700,000	11,700,000	11,700,000
Lifetime exemption	(11,700,000)	(6,000,000)	(3,500,000)
Taxable estate	-	5,700,000	8,200,000
Estate tax rate*	40%	40%	45%
Estate tax (estimated)	-	2,280,000	3,690,000

* Flat rate is use for illustration purposes.

SUMMARY

An estate of \$11,700,000 per person (\$23,400,000 per couple) would result in no tax under current law (before 2026). That same estate would result in a taxable estate of about \$5,700,000 (per person) in 2026 resulting in tax of \$2,280,000. And finally, that same estate would result in a taxable estate of \$8,200,000, resulting in tax of \$3,690,000.

Waiting to evaluate your estate until something changes could be a very expensive decision. Please [contact us](#) today if you would like our help developing a game plan for each scenario.

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