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Democrats Mull Weakening Biden Tax on Capital Gains for Estates

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- Biden plan would hit heirs with much higher capital gains bill
- Staff discuss idea that would delay when the bill must be paid

The Biden administration's proposal to dramatically expand the inheritance tax bill for wealthy Americans is running into some headwinds with Democrats on Capitol Hill, showcasing nervousness about the scope and size of elements of the White House's ambitious tax plans.

President Joe Biden's sweeping expansion of social spending programs would be financed in part by tax hikes on the rich. A key element of that is ending "step-up in basis," which allows heirs to use the market value of assets at the time of inheritance -- rather than the historical purchase price -- as the cost basis for capital gains.

Instead of hitting heirs with a hefty tax payment at the time of the death of their benefactor, staff for House Ways and Means Chair Richard Neal have floated allowing the beneficiaries to defer the bill as long as they hang on to the asset, according to people familiar with the matter.

That possibility was presented on a Tuesday call with progressive groups and tax policy experts, according to the people, who spoke on condition of anonymity as the discussion was private.

Asked about the call, Neal, a Massachusetts Democrat, said in a statement, "When Treasury releases its Green Book in the coming weeks, I look forward to reviewing the administration's various revenue proposals and working with other Ways and Means members to chart a path forward."

The so-called Green Book is a report from the Treasury Department that's expected to detail the Biden tax plans, which have so far been released only in outline form.

The White House declined to comment.

A separate push by the Biden administration to raise the corporate tax to 28% from 21% met with a call from moderate Senator Joe Manchin of West Virginia for a less dramatic increase. Biden has also proposed boosting the top income tax rate and the capital gains rate for those earning more than $1 million.

The change floated by Neal's staff would give beneficiaries of large estates the incentive not to sell, known as the lock-in effect, and it would mean bringing in less money to pay for Biden's $1.8 trillion American Families Plan. The Urban-Brookings Tax Policy Center estimates that Biden's capital-gains proposals, including taxing unrealized gains at death, would generate $372.7 billion over a decade.

"Because you give people the opportunity to postpone the realization of taxation on their appreciated assets you are going to get less revenue," said Hank Gutman, a former congressional and Treasury aide. Gutman recently testified at the Ways and Means Committee about how lawmakers could go about eliminating step-up in basis.

The change also would not go as far in confronting the inequality that the Biden administration has campaigned to address, some of which, aides say, results from wealth being passed from generation to generation without taxation.

A separate person briefed on the Tuesday call said that Neal's staff wasn't floating a definitive idea, but discussing the range of options for Democrats.

One Democratic lawmaker, New Jersey Representative Bill Pascrell, a senior Ways and Means member, has introduced legislation that would end step-up in basis and make the tax bill due at the time of death of the benefactor.

Inequality Focus

"By allowing the richest people in American to avoid paying taxes on their capital gains, stepped-up basis is a seminal driver of the economic inequality that is slowly poisoning the United States," Pascrell said in a statement. "I am always open to discussing avenues to strengthen legislation that addresses tax inequities. But our focus remains on sealing shut this loophole."

Neal said in his statement, "I've been very clear that no decisions have been made on this subject, though I know Congressman Pascrell has put forward legislation on the matter."

These early discussions indicate the challenges the Biden administration will face as it seeks to raise roughly $4 trillion to pay for both its infrastructure and families plan. It also shows the extent to which centrist Democrats on Capitol Hill may be reluctant to embrace the magnitude of tax increases on the rich and on corporations proposed -- even as Biden's top aides tout polling that shows the majority of Americans approve of higher taxes on both.

The idea suggested by Ways and Means staff would address criticisms of Biden's estate-tax proposal that it could force people who receive illiquid assets -- such as real estate or businesses -- to sell their inheritances right away because they didn't have the cash on hand to pay the tax.

Family Assets

Biden's plan does have an exception for family-owned farms and businesses, but the administration hasn't spelled out the specifics about who would qualify.

Representative Mike Thompson, a California Democrat who chairs the Ways and Means panel that oversees tax issues, said at a hearing earlier this month that family farms and business shouldn't be forced to sell, because they cannot pay the taxes.

Progressives who have been proposing to tax assets at death for years, and are likely to oppose changes that would greatly weaken Biden's proposal.