

The Estate Planner's Guide to RECENT DEVELOPMENTS

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Our Agenda

A green pen is positioned diagonally on the right side of the image. In the upper center, there is a hand-drawn square with a green checkmark inside it, all on a background of a white notepad with a light gray grid pattern.

- A Brief Look at the Federal **Income and Transfer Tax Landscape**
- Recap of Recent Legislation
 - Consolidated **Appropriations Act** of 2020
 - The **American Rescue Plan Act** of 2021
- Forthcoming(?) **Tax Legislation**
- What the **Cool Kids** are Doing (or Thinking About) Now
- Other **Developments of Note**

2021 Federal Income Tax Brackets for Individuals

Taxable Income Exceeding		Ordinary Income	Adjusted Net Cap Gain* & Qualified Dividends	Medicare Surtax on Earned Income**	Medicare Surtax on Net Investment Income
Single	Married Filing Jointly				
\$0	\$0	10%	0%	2.9%	0%
\$9,950	\$19,900	12%			
\$40,400	\$80,800				
\$40,525	\$81,050	22%			
\$86,375	\$172,750	24%			
\$164,925	AGI over \$250,000	32%	15%		
AGI over \$200,000	\$329,850				
\$209,425	\$418,850	35%		3.8%	3.8%
\$445,850	\$501,600				
\$523,600	\$628,300	37%		20%	

* Other long-term capital gains could be taxed as high as 25% (building recapture) or 28% (collectibles and §1202 stock).

** Includes employer contribution of 1.45% (§3111(b)(6)), individual contribution of 1.45% (§3101(b)(1)), and additional tax of 0.9% for adjusted gross income over \$200,000 for an unmarried individual and \$250,000 on a joint return (§3101(b)(2), for years after 2012).

2021 Federal Income Tax Brackets for Trusts & Estates

FEDERAL INCOME TAX RATES FOR TRUSTS AND ESTATES FOR 2021

(Adapted from Rev. Proc. 2020-45)

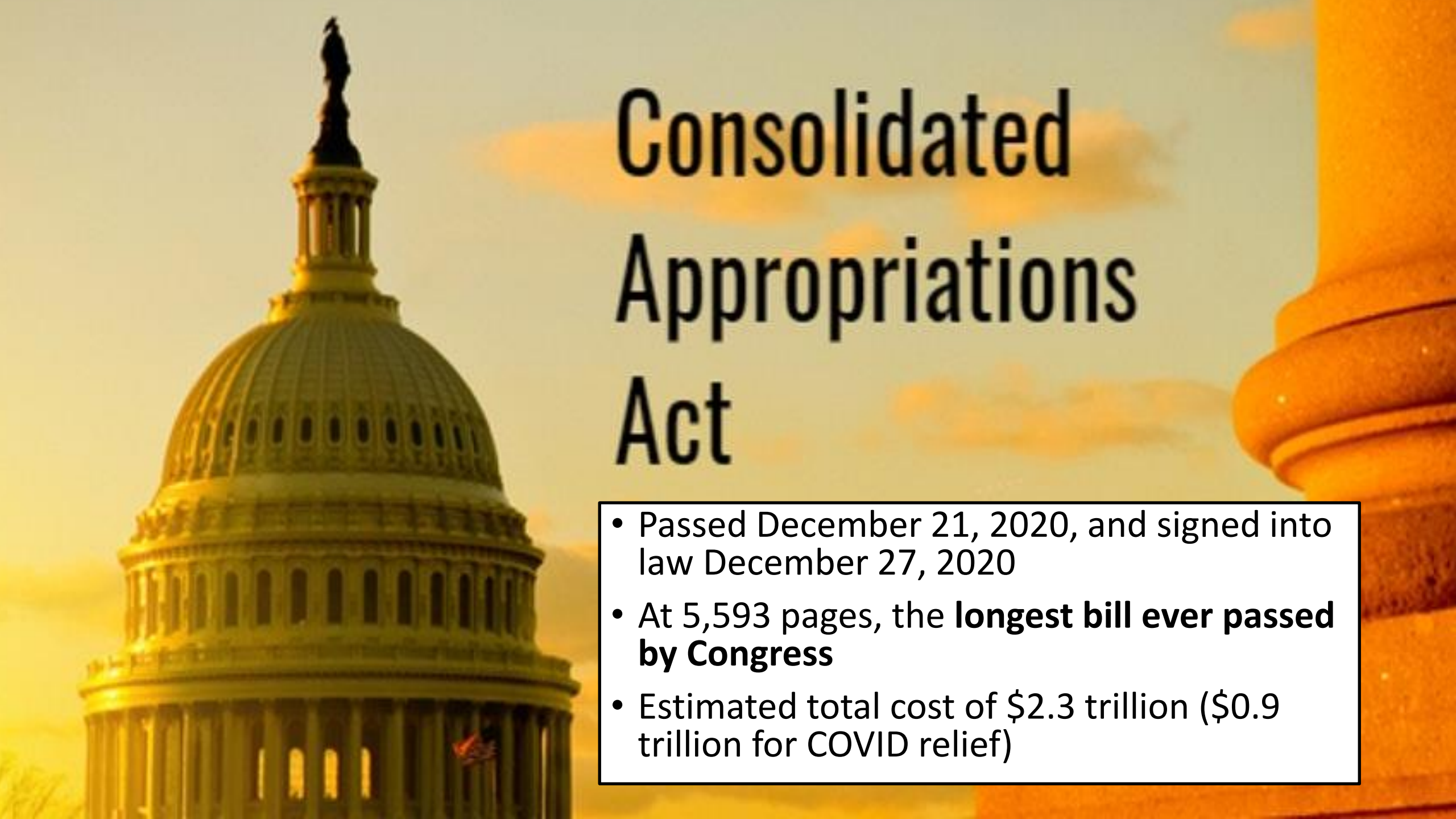
Taxable Income Exceeding	Ordinary Income	Adjusted Net Cap Gain* & Qualified Dividends	Medicare Surtax on Net Investment Income
\$0	10%	0%	0%
\$2,650	24%		
\$2,700		15%	
\$9,550	35%		
\$13,050	37%	20%	
\$13,250			

* Other long-term capital gains could be taxed as high as 25% (building recapture) or 28% (collectibles and §1202 stock).



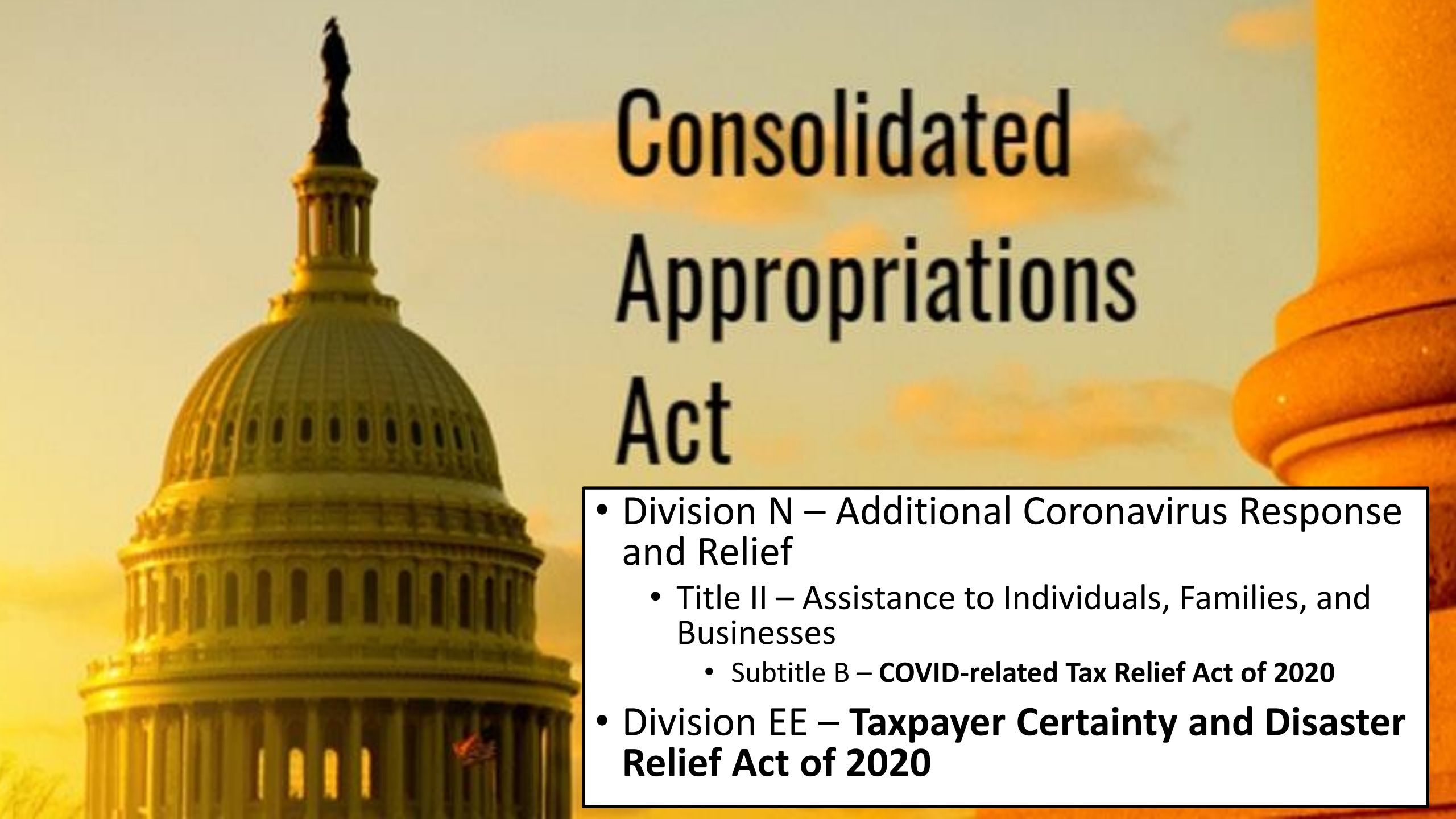
Federal Wealth Transfer Tax Basic Exclusion Amount

Date of death	Basic exclusion amount
2011	\$5,000,000
2012	\$5,120,000
2013	\$5,250,000
2014	\$5,340,000
2015	\$5,430,000
2016	\$5,450,000
2017	\$5,490,000
2018	\$11,180,000
2019	\$11,400,000
2020	\$11,580,000
2021	\$11,700,000



Consolidated Appropriations Act

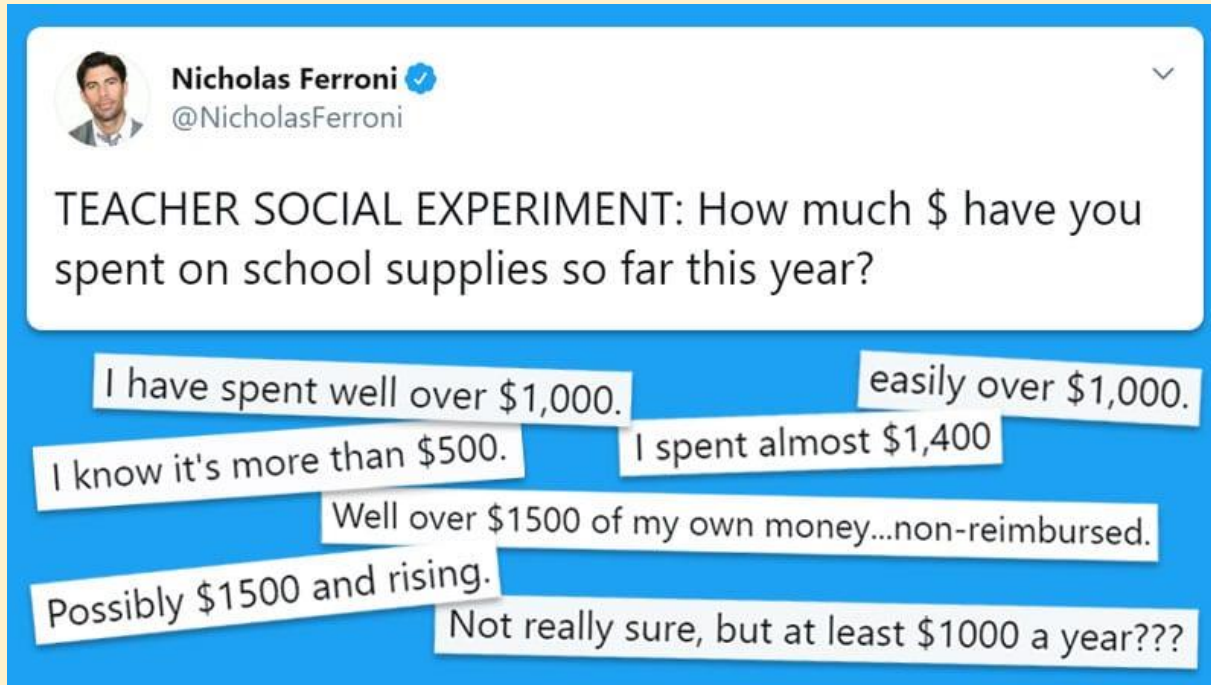
- Passed December 21, 2020, and signed into law December 27, 2020
- At 5,593 pages, the **longest bill ever passed by Congress**
- Estimated total cost of \$2.3 trillion (\$0.9 trillion for COVID relief)



Consolidated Appropriations Act

- Division N – Additional Coronavirus Response and Relief
 - Title II – Assistance to Individuals, Families, and Businesses
 - Subtitle B – **COVID-related Tax Relief Act of 2020**
- Division EE – **Taxpayer Certainty and Disaster Relief Act of 2020**

\$250 Educator Expense Deduction Broadened



Personal protective equipment, disinfectant, and other supplies used for prevention of COVID-19 spread now included as “supplies ... used ... in the classroom”

PAYCHECK PROTECTION PROGRAM

Additional COVID-19 Relief Now Available



U.S. Small Business
Administration

Paycheck Protection Program Loans

PPP proceeds are to be used to pay:

- Payroll (at least ~~75%~~ 60%)
- Interest on pre-existing mortgages
- Rent under pre-existing leases
- Utilities under pre-existing contracts
- **Covered operations expenditures**
- **Covered property damage costs**
- **Covered supplier costs**
- **Covered worker protection expenditures**

PAYCHECK PROTECTION PROGRAM

Additional COVID-19 Relief Now Available



U.S. Small Business
Administration

Paycheck Protection Program Loans

- “No deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied” by reason of excluding a forgiven PPP loan from gross income.
 - Overrules Notice 2020-32 and Rev. Rul. 2020-27, disallowing deduction for expenses paid with PPP loan proceeds with a reasonable expectation of forgiveness
- S corps and partnerships will treat excluded loan proceeds as tax exempt income for pass-through purposes
 - S corp shareholder or partner will increase basis in the entity by share of the amount of the forgiven loan proceeds, thus preserving the tax-free nature of the proceeds

Cash Donations by Non-Itemizers

For 2021 only, an individual who does not elect to itemize deductions may deduct up to **\$300** in cash contributions made in 2021 to a public charity (but not a supporting organization or donor advised fund) in addition to the standard deduction

\$600 for joint filers!

	2020	2021
Amount deductible	\$300 per filing unit	\$300 per taxpayer (\$600 for joint filers)
Where deductible	Above the line (in determining AGI)	In addition to the standard deduction (but not above the line?)
Eligible contributions	Cash contributions made to public charities (and not to supporting organizations or donor advised funds)	

Other Tax Provisions of Note

AM 2112

Hotel Childwold

LAUNDRY LIST

.....190

Name.....

Room..... To be returned.....

Aprons . . .	15
Bibs . . .	10
Blankets . . .	25 to 50
Bosoms . . .	25
Caps . . .	
Chemises . . .	15 to 50
Coats . . .	50
Collars . . .	5
Corset Covers . . .	25
Cuffs, pairs . . .	8
Drawers . . .	15
Dresses . . .	50 to 1.50
" Children's . . .	25 to 75
" Night . . .	25 to 50
Handkerchiefs . . .	5
Napkins . . .	
Pillow Slips . . .	
Pressing . . .	
Skirts, Cotton . . .	20 to 1.00
" Flannel . . .	25 to 50
Sacques . . .	25
Shirt Waists . . .	25 to 50
Shirts . . .	15
" w. Collars & Cuffs . . .	20
" Cotton . . .	15
" Flannel . . .	15
" Night . . .	10 to 20
Stockings, per pair . . .	5
Ties . . .	5
" Lace . . .	10
Towels . . .	5
Trousers . . .	50
Under Vests . . .	15
Vests . . .	25 to 50
Pajamas . . .	15
Guamps . . .	10 to 15

- **Medical expense** floor permanently set at 7.5% of AGI
- Deduction for qualified **tuition and related expenses** replaced with higher income limits on **lifetime learning credit**
- Exclusion for **cancelation of qualified principal residence indebtedness** extended through 2025, but capped at \$375,000 (\$750,000 for MFJ)
- Treatment of **mortgage insurance** as **qualified residence interest** extended through 2021
- For 2021 and 2022 only, **100% deduction** for **business meals** furnished by a restaurant

Deduction for Business Meals in 2021 & 2022

- **NOT DEDUCTIBLE**

- Event tickets
- Transportation to/from restaurant for business meal
- Club memberships
- Meals (not separately charged) during entertainment

- **50% DEDUCTIBLE**

- Meals on business premises for convenience of employer (100% if provided by restaurant)
- Snacks and beverages at the office

- **100% DEDUCTIBLE**

- Meals during business travel (since provided by restaurant)
- Meals at a conference (since provided by restaurant)
- Client business meals (if provided by restaurant, taxpayer is present, and not lavish or extravagant)




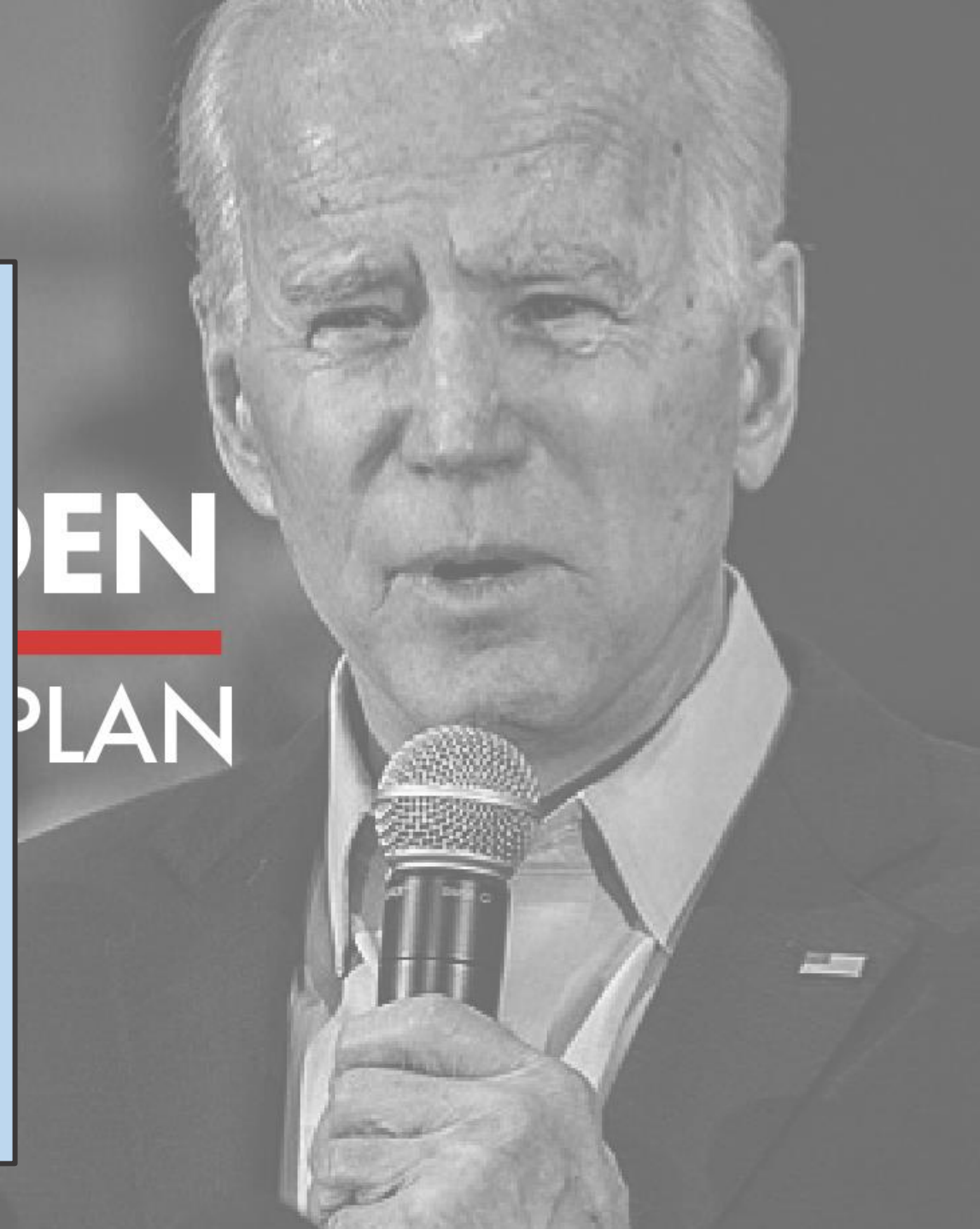


American Rescue Plan Act of 2021

- **2021 Recovery Rebates**
 - \$1,400 per TP and dependent
 - Phaseouts at \$75k, \$112.5k, \$150k
- **Expanded Child Tax Credit**
 - \$3,600 ages 0-5, \$3,000 ages 6-17
 - Refundable
 - 2021 only
- **Expanded Earned Income Credit**
- **Child Care Credit** Refundable (2021 only)
- **Student Loan Forgiveness** Fully Excludable (if forgiven in 2021-2025)

Biden Tax Plan

- **CORPORATE TAX**
 - Raise rate to 28%
 - 15% minimum tax on book income
- **INDIVIDUAL TAX**
 - Return top rate to 39.6%
 - No capital gains preference for those making more than \$1 million
 -  • Increase child credit (\$3,600 under 6, \$3,000 ages 6-17)
 - Restore first-time homebuyers credit
- **ESTATE TAX**
 - Return to 2009?
 - Repeal stepped-up basis?



What the Cool Kids Are Doing in Estate Planning



Making Lemonade out of Lemons



- Harvesting capital gains
- Roth IRA conversions
- Leveraged wealth transfers

Gifts in Anticipation of a Reduced Exclusion

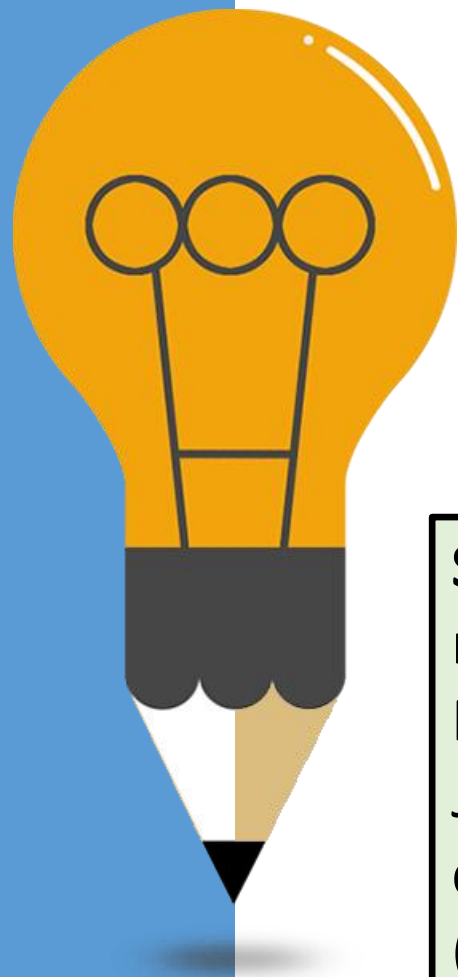
Some Great Techniques in the Current Climate

- Installment **Sales to Defective Trusts**
- Charitable Lead Annuity Trusts (**CLATs**)

Issues to Consider

- **Disclaimer** if exclusion stays steady or value declines
- Give third party a power to confer a **general power of appointment** to the grantor
- **Give value**, not property!





Gift of “a limited partner interest having a fair market value of TWO MILLION NINETY-SIX THOUSAND AND NO/100THS DOLLARS (\$2,096,000.00) as of December 31, 2008 ***, as determined by a qualified appraisal within ninety (90) days of ... this Assignment”

Sale of “a limited partner interest having a fair market value of TWENTY MILLION AND NO/100THS DOLLARS (\$20,000,000.00) as of January 2, 2009 ***, as determined by a qualified appraisal within one hundred eighty (180) days of ... this Assignment”



**Nelson v.
Comm’r,
T.C. Memo.
2020-81
(June 10,
2020)**

Ultra-Long-Term GRATs (aka “99-Year GRATs”)

- Create traditional zeroed-out GRAT but with very long term
- If (when) the grantor dies, gross estate inclusion determined by the formula to the right →
- If the §7520 rate at death is higher than §7520 rate when GRAT formed, likely only a portion of the assets will be subject to estate tax at death

Annuity amount

§7520 rate at death

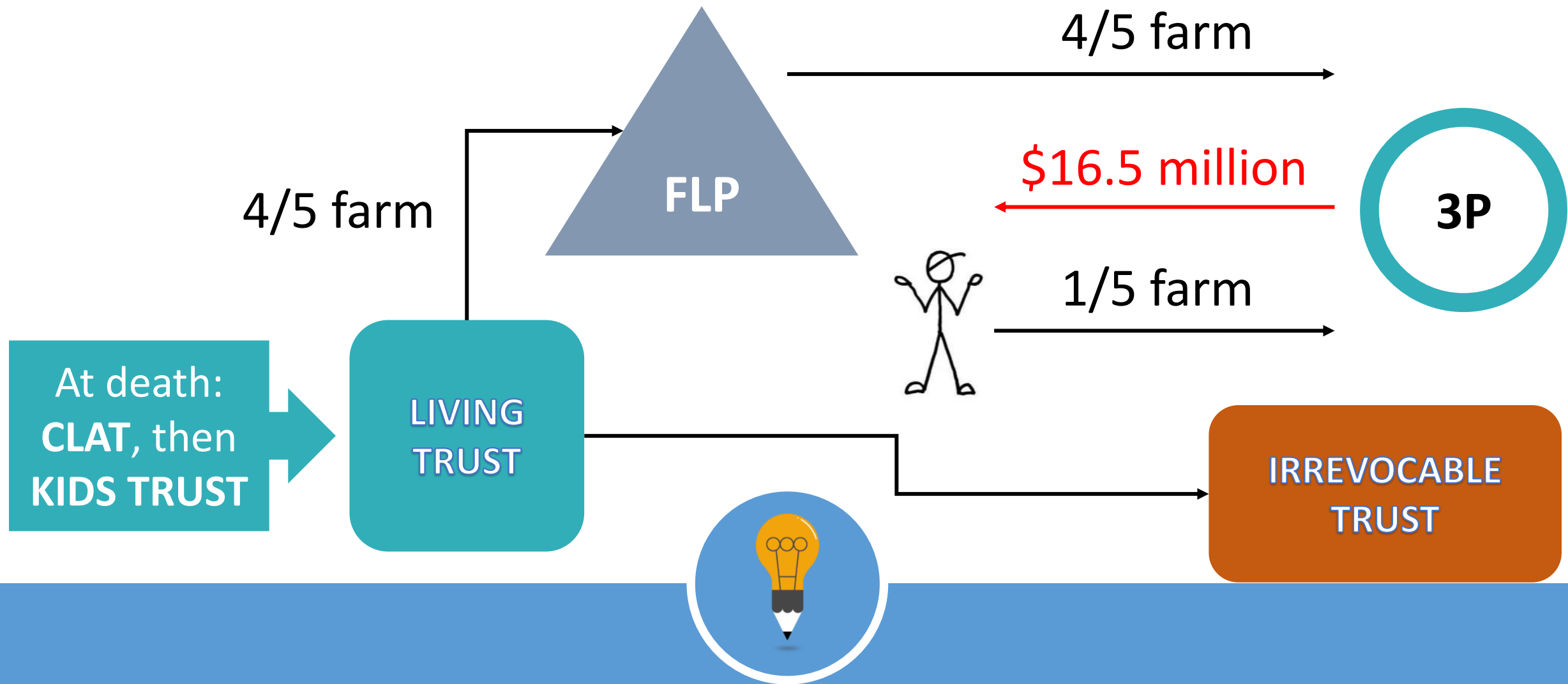


EXAMPLE: \$10 million transfer to 60-year GRAT created today when §7520 rate is 1.0%

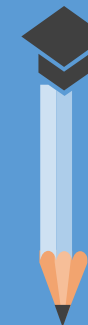
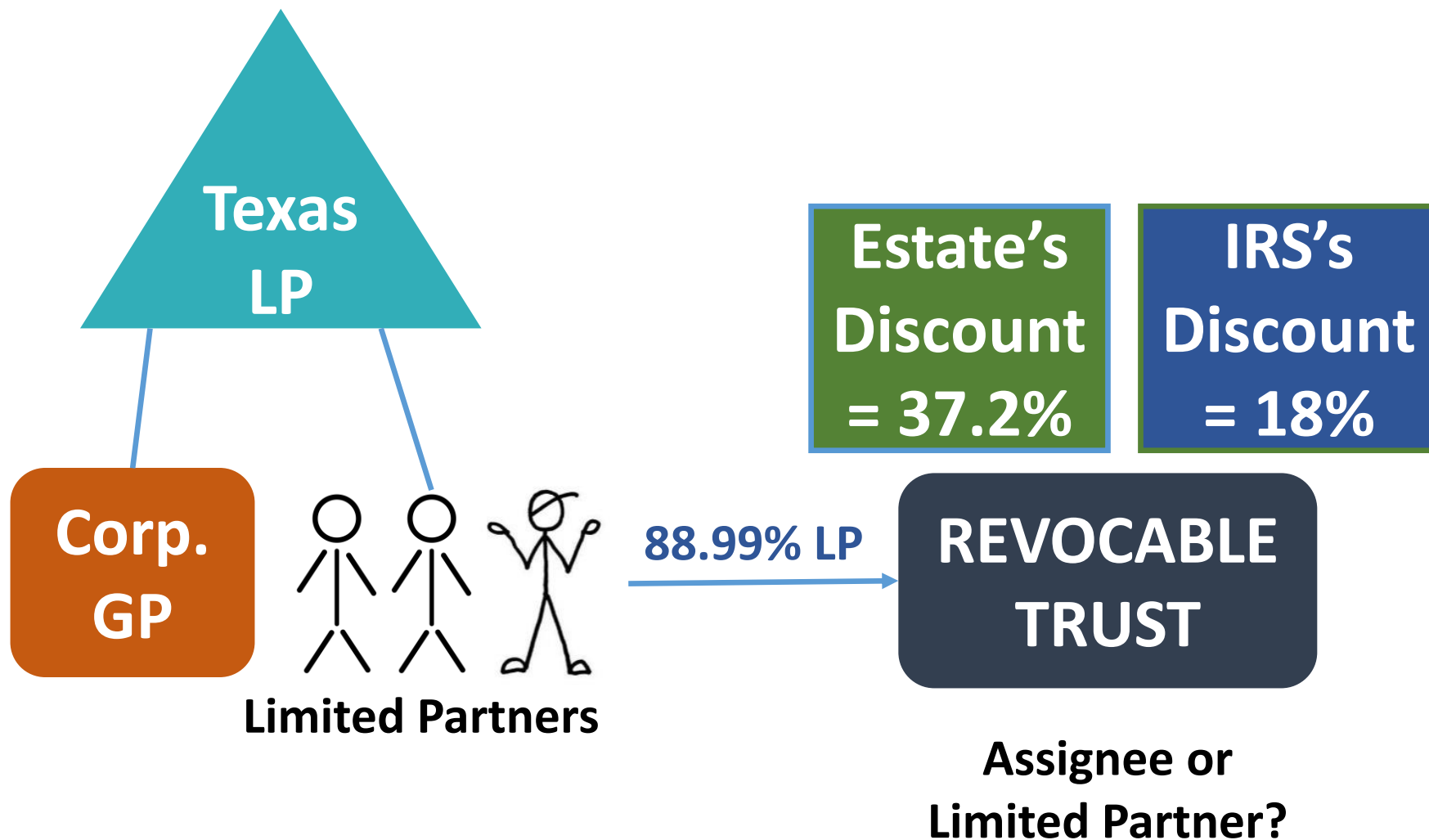
- Annuity amount = \$222,445
- If §7520 rate at death 20 years later is 6.0%, then gross estate inclusion = \$3,707,417
- But if assets grow at 5%, trust will have \$19,177,621
- So only 19% of trust assets included in gross estate!

Spousal Lifetime Access Trusts (SLATs)

- Donor Spouse (DS) creates irrevocable trust for benefit of Beneficiary Spouse (BS) and others
- Structured like a “credit shelter trust” or “exemption trust” or “bypass trust”
- Gift to the SLAT does not qualify for the marital deduction, so it uses up the DS’s exclusion
- Usually structured as a grantor trust for income tax purposes
- No estate tax upon BS’s death
- BS can have testamentary limited power of appointment



Estate of Moore v. Commissioner
T.C. Memo. 2020-40 (April 7, 2020)



Estate of
Streightoff
v. Comm'r
(5th Circuit)

Conservation Easement Cases

- *Oakbrook Land Holdings LLC v. Commissioner*
 - T.C. Memo. 2020-54 (May 12) → Charity not assured proportionate value upon extinguishment
 - 154 T.C. No. 10 (May 12) → And that regulation is valid!



Estate of Bolles v. Commissioner, T.C. Memo. 2020-71 (June 1)

- 1969 – 1989: Decedent loans over \$1 million to oldest son (Peter)
- 1989: Decedent executes living trust, with all of her children except Peter to take after death
- 1995: Decedent executes new living trust including Peter as an equal beneficiary
- 1996: Peter signs acknowledgment that the outstanding debt shall be taken into account for purposes of determining his share of the trust



PLR 202022002 (May 29)



- Trust 1 = §678 trust for the benefit of A
- Trust 2 = Grantor trust created by A
- Trust 1 sells LLC interests to Trust 2 for cash and a promissory note
- HELD → Transaction is not recognized for federal income tax purposes!

Thank
you

