



# Post-Election Webinar Series

Real Estate | November 30, 2020

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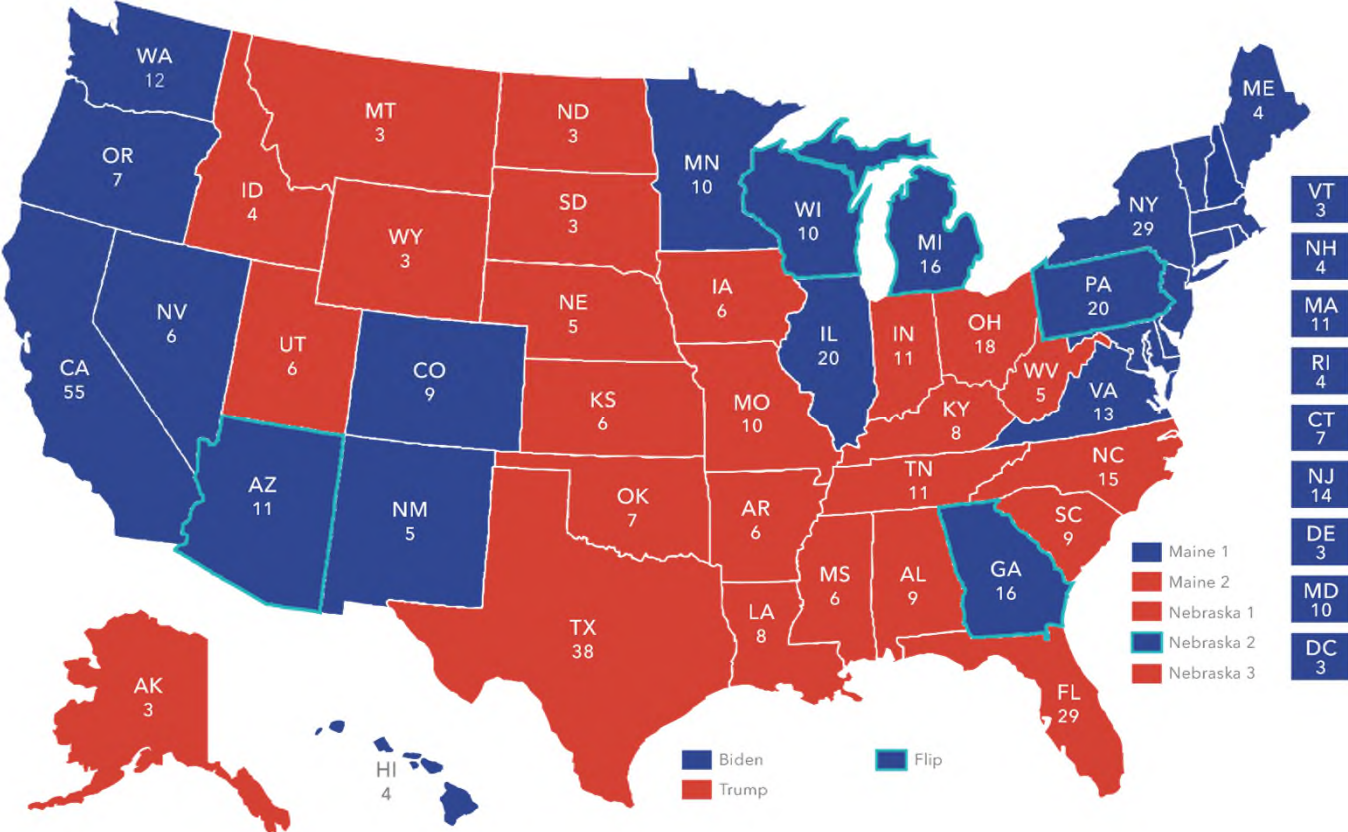
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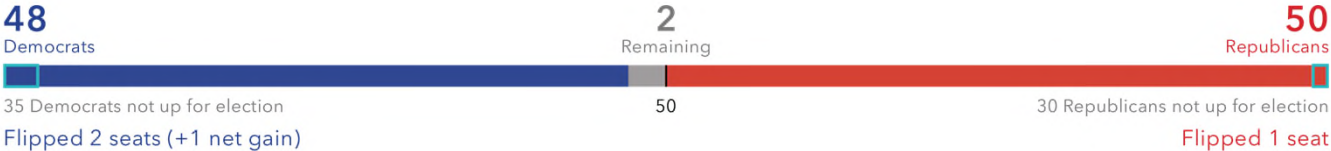
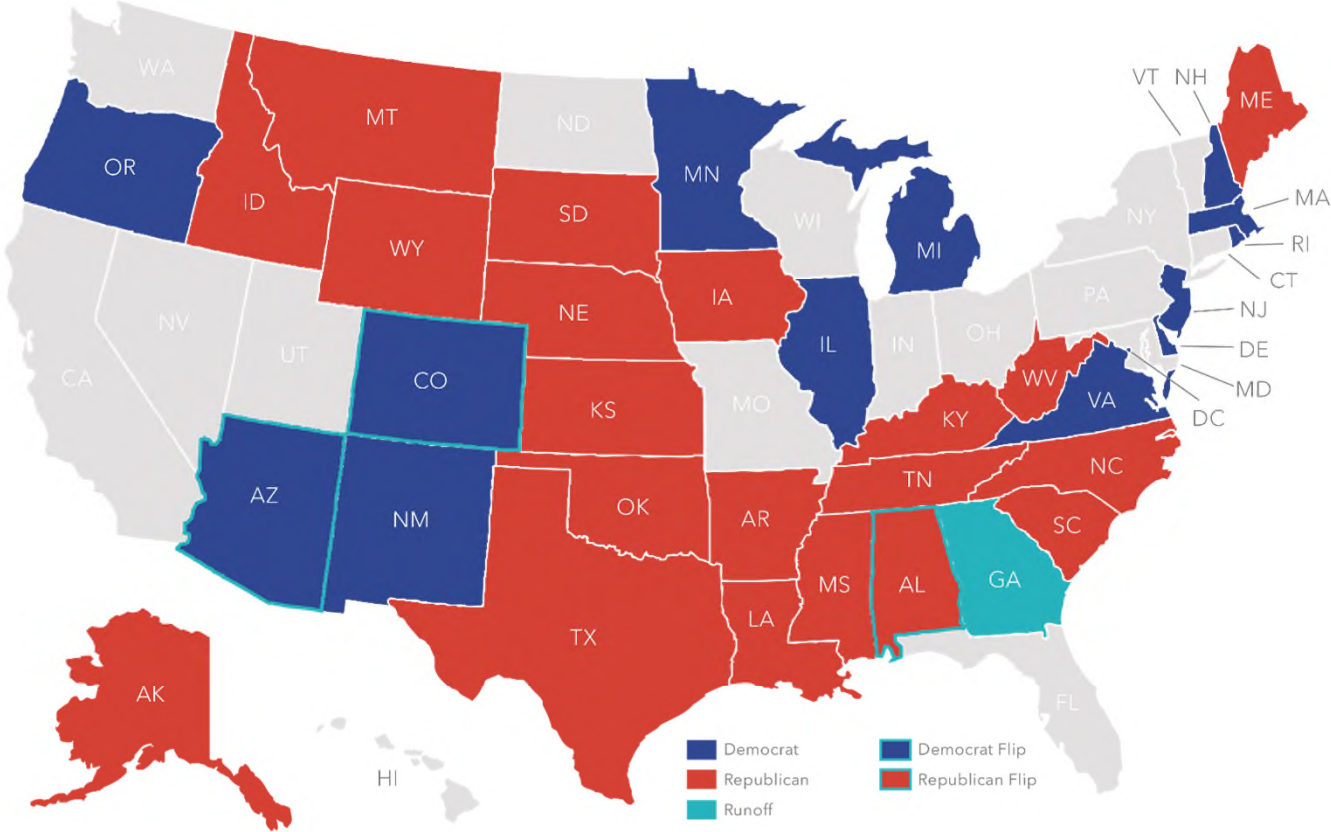
# The 2020 Election – President-Elect Biden at 306

- President-Elect Joe Biden is the projected winner with 306 votes. President Trump has 232 votes but has yet to concede.



# The 2020 Election – The U.S. Senate: Undecided

- Control of the United States Senate has not been determined yet.
- Republicans were able to flip Alabama and hold Montana and Iowa.
- Democrats flipped Arizona and Colorado.
- There will be two runoffs in Georgia that will determine the majority in the U.S. Senate.





# The 2020 Election – The Next 60 Days

## The Election Fight, Continuing Resolution, and COVID-19 Stimulus Bill

- How long could it take to finalize the results of the presidential election?
- Georgia January runoff elections
- The government runs out of funding on December 11
- Will Democrats and Republicans work to finish a COVID-19 bill and combine with a CR or wait until 2021?
- Will Trump sign any bill coming to him?



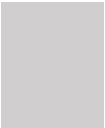
# The 117th Congress

## House of Representatives



Rep. Nancy Pelosi (D-CA)

### House Committee Chairs



Unknown  
House Appropriations



Rep. Richard Neal (D-MA)  
House Ways and Means



Rep. Frank Pallone (D-NJ)  
House Energy and Commerce



Rep. Maxine Waters (D-CA)  
House Financial Services

## U.S. Senate



Sen. Mitch McConnell (R-KY)

### Senate Committee Chairs



Sen. Richard Shelby (R-AL)  
Senate Appropriations



Sen. Mike Crapo (R-ID)  
Senate Finance



Sen. Roger Wicker (R-MS)  
Senate Commerce, Science, and Transportation



Sen. Patrick Toomey (R-PA)  
Senate Banking

**“My tax policy is based on a simple proposition:  
stop rewarding wealth and start rewarding work.”**

- Vice President Joe Biden  
(May 22, 2020 interview on CNBC “Squawk Box”)

Penn Wharton Budget Model shows Biden tax plan raising \$3.38 trillion over 10 years

Nearly 80% of revenue expected to come from top 1.5% of taxpayers (approx. 18% rate increase)

# Biden: Business Tax Reform Proposals

- “I'd make the changes on the corporate taxes on day one” (September 9 CNN interview)
  - Increase corporate tax rate to 28%
  - 15% corporate AMT on book income with net income above \$100 million (greater of)
- International tax proposals
  - Double GILTI rate from 10.5% to 21% (and from 13.125% to 26.25% in 2026)
    - Apply on jurisdictional instead of aggregate basis
    - More stringent rules for calculating tax
  - “Offshoring tax penalty”
    - 10% surtax on U.S. companies’ overseas profits and services for sales back to the United States (30.8% rate)
  - “Made in America” Tax Credit
    - 10% advanceable credit to companies that create jobs and accelerate economic recovery
      - Revitalizing facilities, reshoring production, and expanding U.S. operations
  - Supports more stringent inversion legislation (Stop Corporate Inversions Act) and regulations
  - Delay deductions and expensing write-offs for moving jobs or production overseas



# Biden: Business Tax Reform Proposals (cont.)

- Reform tax “loopholes” in real estate industry
  - Section 1031 exchanges
  - Depreciation rules
- Repeal NOL carryback provisions in CARES Act
- Financial fee on liabilities of firms with more than \$50 billion in assets (similar to Obama era proposal)
- Create tax credits for small businesses that sponsor retirement plans
- Establish a Manufacturing Communities Tax Credit
  - Incentives for investment in communities that experienced a major job loss event (closure of major employer or government facility)
  - Obama administration proposal



# Biden: Business Tax Reform Proposals (cont.)

- Expand the New Markets Tax Credit
  - Provides incentives for investment in low-income communities
  - Increases annual allocation to \$5 billion annually and makes the credit permanent
- Climate-related proposals
  - Global recession shifted Biden’s focus away from carbon pricing schemes (with greater focus on incentives)
    - Carbon tax push could still come from Congress: Democrats have proposed legislation delaying implementation of carbon tax until 2023
    - Recent wildfires and hurricanes could increase urgency
  - Expand and make permanent the Renewable Energy Investment Tax Credit (ITC)
    - Provides credits for certain renewable energy investment (solar, wind, geothermal)
  - Encourage carbon-free manufacturing, increase incentives for carbon capture credits, and incentivize domestic electric vehicle manufacturing
  - Make existing green energy credits permanent and more accessible to low-income taxpayers
  - Remove tax subsidies for fossil fuels and “take action” against polluters

# Biden: Individual Tax Reforms

- Reverse TCJA tax cuts for wealthy filers
  - Will not raise taxes on individuals making less than \$400,000
  - Restore the 39.6% top individual rate
  - Phase out business income deduction (Sec. 199A) for filers with incomes above \$400,000
- Reform opportunity zone program
  - Incentivize funds to partner with nonprofit organizations
  - Have OZ benefits reviewed by Treasury – requiring clear economic, social, and environmental benefits
  - Require reports from recipients detailing poverty status, job creation, and housing affordability in OZ communities
- Create 12.4% payroll tax on wages above \$400,000 (w/no tax between \$137,700 and \$400,000)
  - Split between employee and employer
  - Cannot be done through reconciliation

# Biden: Individual Tax Reforms (cont.)

- Eliminate capital gains “loopholes”
  - Individuals with incomes above \$1 million will pay a 39.6% rate on LTCG
  - Eliminate step-up in basis for inherited assets
- Estate tax reforms
  - Roll back the unified estate tax exemption increase in TCJA (but to what level?)
  - Rate increases to “historical norms” (potential to be as high as 77%)
  - Reforms to trusts – various Democrats have advocated for changes in recent years
    - Minimum term requirements and transfer taxes for Grantor Retained Annuity Trusts (GRATs), valuation discount limitations

# Biden: Individual Tax Reforms (cont.)

- Cap benefit of itemized deductions for taxpayers at 28% of value
  - Taxpayers with tax rates higher than 28% will face limited deductions
- Restore Pease limitation on itemized deductions for incomes above \$400,000
- Repeal SALT cap
- Expand EITC (to cover low-income, childless individuals over the age of 65)
  - Could supplement with additional refundable credit distributed monthly (Senator Harris' LIFT Act)
- Expand credits for children and elder care
  - Increase child care credit from \$3,000 (for one individual) to \$8,000
  - Create a \$5,000 “informal caregivers” credit
  - Temporary increase of the child tax credit during pandemic (up to \$3,600 depending on child's age)



# Biden: Individual Tax Reforms (cont.)

- Renewable energy tax credits for individuals
  - Restore EV credit for middle class consumers for U.S. vehicles (and charging stations)
- Eliminate income limitations for ACA refundable premium tax credit
- Wealth-building tax provisions
  - Refundable \$15,000 credit for first-time homebuyers
  - Tax credit for low-income renters (reduce rent & utilities to 30% of income)
  - Equalize tax treatment of retirement contributions (roughly a 25% refundable credit to replace deduction for DC plan contributions)
  - Auto IRAs – SECURE Act 2.0

# Biden: Capital Gains and Estate Tax Reforms

- Individuals with incomes over \$1 million will pay 39.6% on LTCG
- Eliminate the step-up in basis for inherited assets
  - Carryover basis or death as a realization event?
  - No specifics, but an Obama proposal would have treated death as a realization event
- Example:
  - Basis of original asset is \$1 million. Value increases to \$5 million
    - Present law: Upon the owner's death, beneficiary receives asset with a tax basis of \$5 million (no CG tax)
    - Obama Proposal: Beneficiary would pay 43.4% (39.6% increased CG rate + 3.8% net investment tax) on \$4 million in gains = \$1,736,000 in tax
    - Carryover basis: No tax due, but beneficiary inherits asset with a \$1 million basis

# Biden: Capital Gains and Estate Tax Reforms (cont.)

- Capital gains interaction with estate tax — double taxation?
  - 2015 Obama proposal exempted \$100,000 of capital gains (\$200,000 for joint filers) from the estate tax
- Biden has suggested repealing estate tax exemption increase in TCJA
  - Reduced exemption amount from \$11.58 million to \$3.5 million
- Example: Asset with original cost of \$10 million now worth \$15 million
  - Present law
    - Beneficiary pays no CG tax; inherits asset with a new tax basis of \$15 million
    - Estate subject to 40% estate tax on \$3,420,000 (amount above \$11.58 million exemption) = \$1,368,000 in estate tax
    - Total taxes: \$1,368,000
  - Biden plan
    - Beneficiary would pay 43.4% CG tax on \$5 million in gains = \$2,170,000 in CG tax
    - Estate subject to 45% estate tax on \$9,330,000 (amount after \$3.5 million exemption and \$2,170,000 CG tax deducted) = \$4,198,500 in estate tax
    - Total taxes: \$6,368,500

# Democrat Proposals on Taxation of Capital Gains

Democrats are looking at major changes to the way capital gains taxation works. The effects of their tax proposals would depend on each taxpayer’s circumstances and on market performance.

**CURRENT LAW**

Assets can appreciate without capital gains taxes and heirs pay taxes only on gains in value after the original owner’s death.

**BIDEN PLAN**

Death would be considered a realization event, triggering capital gains taxes on appreciated assets, paid at ordinary income tax rates.

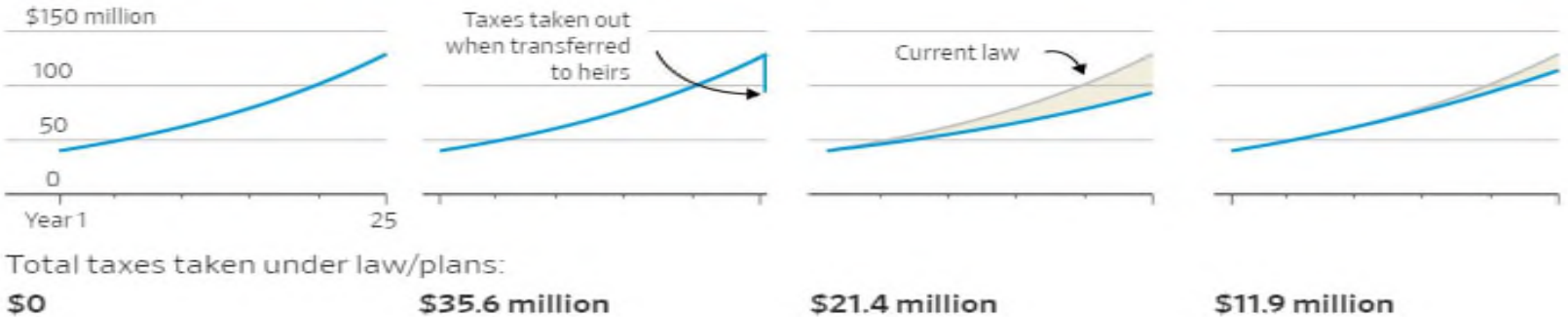
**WYDEN PLAN**

Each year, investors would pay income taxes on the gain in their assets. This is called a mark-to-market system.

**WARREN PLAN**

Net worth above \$50 million subject to a 2% annual tax, plus a 1% tax on net worth above \$1 billion.

Example one: Asset value begins at \$40 million, 5% growth until person dies in year 25



Source: Wall Street Journal: Democrats’ Emerging Tax Idea: Look Beyond Income, Target Wealth  
<https://www.wsj.com/articles/democrats-emerging-tax-idea-look-beyond-income-target-wealth-11566916571>



# Mark-to-Market Tax (Wyden Proposal)

- Require annual tax (at ordinary income rates) on unrealized gains of tradeable property
  - Determined on last day of taxable year
    - Use largest of: (i) unadjusted basis; (ii) value determined at date of last transaction establishing value; and (iii) value of interest from most recent applicable financial statement
  - Non-tradable assets (closely held businesses, collectables, real estate) would fall under lookback provision
    - Tax assessed when asset is sold with lookback charge applied (interest accrued over holding period)
    - Transfers of property would be a realization event
- Allow deduction for losses (but “subject to certain limitations to prevent abuse”)
- Applies to individuals, estates, or trusts that meet asset or income requirements for preceding three years
  - \$1 million income threshold or \$10 million asset threshold indexed for inflation (single and joint filers)

# Mark-to-Market Tax (Wyden Proposal) (cont.)

- Special exemptions
  - Retirement accounts (\$3 million exemption for total combined value)
  - Personal residences (\$2 million exemption for all homes combined)
  - Family farms (\$5 million exemption)
  - Household goods not considered applicable assets (subject to certain limitations)
- Rules for treatment of debt, whether losses reduce ordinary income, and transition rules still being considered

# What Is a Wealth Tax?

- A wealth tax is a tax on the assets that an individual currently owns based on the market value of the taxpayer's assets on a specific date of taxation
- Wealth tax vs. Income tax

	Income Tax	Wealth Tax
When triggered	When the taxpayer collects money or assets of value	When taxpayer is holding assets on a certain tax date
Cycle of taxation	One-time tax	Assets taxed for as long as the taxpayer owns them
Taxation of purchases	Tax applies only to net gains in value of property	Applies to all purchased property
Taxation of non-liquid assets	Doesn't apply to unrealized gains. Applies only to the value from selling an asset.	Does apply to all unrealized gains on assets.

- U.S. property taxes are a current example of a tax similar to the wealth tax.

# “Ultra-Millionaire Tax” (Warren Proposal)

- Households would pay an annual 2% tax on net worth above \$50 million (3% on net worth above \$1 billion)
  - Would apply to the top 0.1% of American households (about 75,000)
  - The proposal includes anti-evasion measures, including:
    - An increase in the IRS enforcement budget
    - A minimum audit rate for taxpayers subject to the Ultra-Millionaire Tax
    - A 40% “exit tax” on the net worth above \$50 million of any U.S. citizen who renounces their citizenship, and
    - Systematic third-party reporting that builds on existing tax information exchange agreements adopted after the Foreign Account Tax Compliance Act
- Estimated to raise \$2.75 trillion in tax revenue (over 10 years)



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**Questions?**

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