

# Sanders and Other Tax Proposals: What They Mean and What to Advise Clients to do Now

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# Sanders and Other Tax Proposals: What They Mean and What to Advise Clients to do Now

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Together We Are Stronger.



Jim. Diagnosed in 1998



Tracey. Diagnosed in 2009



Sarah. Diagnosed in 2012

**National MS Society Contact:**  
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# Estate & GST Taxes

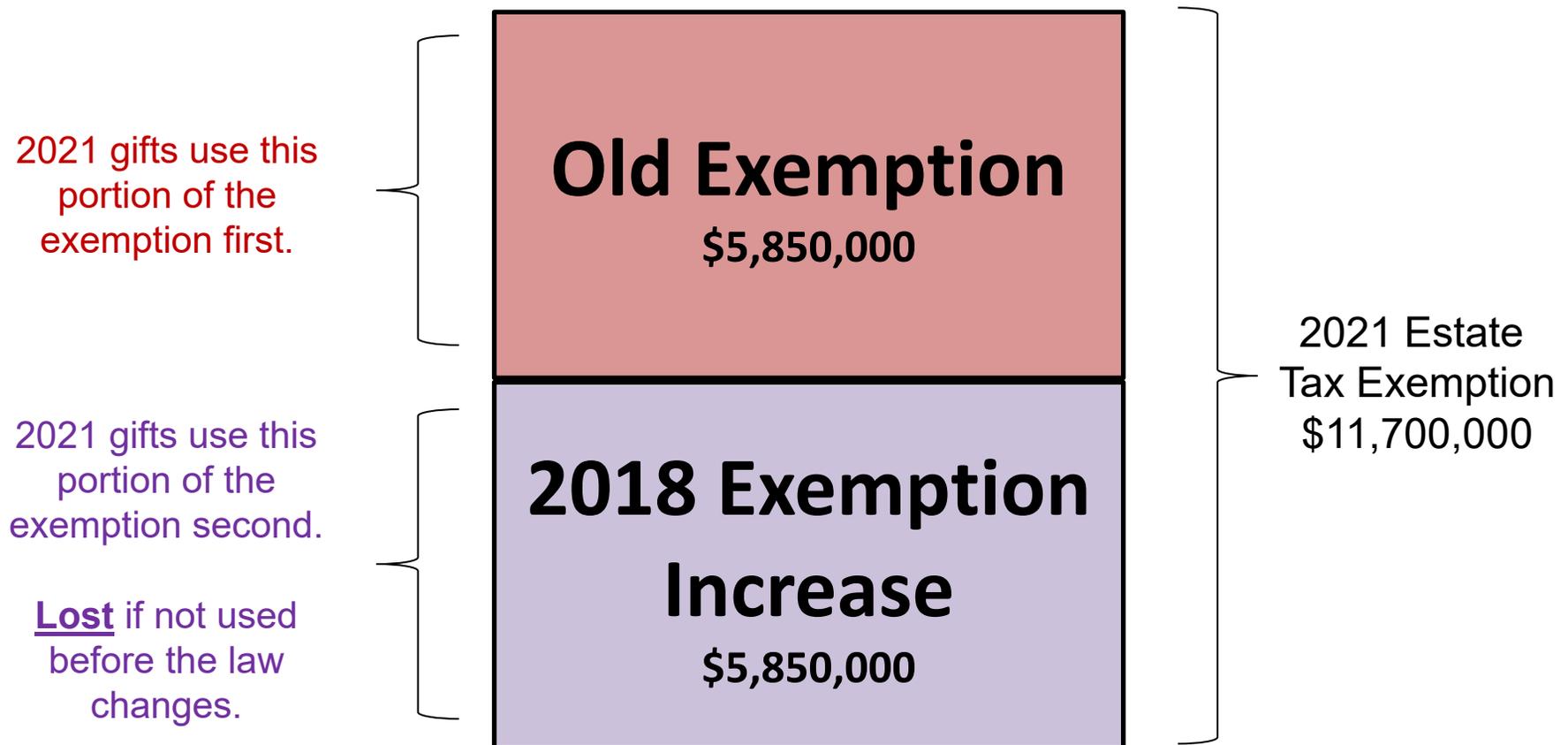
## *Current Situation*

- The TCJA doubled the Basic Exclusion Amount and GST exemption in 2018-2025 (\$10,000,000 in 2011 dollars)
- In 2026 the exemptions revert to pre-TCJA law (5,000,000 in 2011 dollars)
- Given the success of Democrats in the 2020 election, we expect the exemption to substantially decrease by 2022.

**POTENTIAL  
“USE-IT-OR-LOSE-IT”  
OPPORTUNITY**

# Estate & Gift Taxes

## *Exemption Reduction Math – “Use It or Lose It”*



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# Democratic Estate Tax Policy Proposals

- The Democrats have proposed specific estate tax changes that we must now consider
- Three such proposals are detailed in:
  - The “For the 99.5% Act” in 2021 *and* the “For the 99.8% Act” in 2019 – similar proposals
  - President Obama’s final proposed budget, published in 2016

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# Exemption Levels

*All Proposals are Similar*

- Gift Tax Exemption:
  - \$1,000,000
  - Not indexed for inflation
- Estate & GST Tax Exemption:
  - \$3,500,000
  - Indexed for inflation
  - “Portability” retained

For the 99.5% Act, Section 2(b)

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# Rate Structure

- President's Obama proposed merely to return to 2009 levels; i.e. a 45% rate

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# Rate Structure

- For the rate structure proposals (simplified)

Over	But Not Over	99.8% Act	99.5% Act
\$ 3,500,000	\$ 10,000,000	45%	45%
\$ 10,000,000	\$ 50,000,000	50%	50%
\$ 50,000,000	\$ 1,000,000,000	55%	55%
\$ 1,000,000,000		77%	65%

For the 99.5% Act, Section 2(a)

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# Effective Date

## For the 99.5% Act

The exemption & rate structure is effective to deaths, GST transfers, and gifts made after December 31, 2021

For the 99.5% Act, Section 2(c)

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# Special Use Valuation – § 2032A

## *For the 99.5% Act*

- Increases the Special Use Valuation aggregate decrease in value limitation from \$1,180,000 (indexed figure for 2021) to \$3,000,000
- Effective for deaths and gifts after 12/31/21

For the 99.5% Act, Section 3

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# Conservation Easement Exclusion – § 2031(c)

*For the 99.5% Act*

- Increases the exclusion for land subject to a conservation easement from \$500,000 to \$2,000,000
- Increases the maximum percent value of the land which can be excluded from 40% to 60%
- Effective for deaths and gifts after 12/31/21

For the 99.5% Act, Section 4

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# Grantor Trusts

## *For the 99.5% Act*

- Grantor Trust Clarification -> *Anti-Hesch/Blattmachr Rule*
  - No step-up in basis for property in a grantor trust
  - New IRC § 1014 subsection:

*PROPERTY HELD IN CERTAIN GRANTOR TRUSTS.—This section shall not apply to property—*

*(1) held in a trust of which the transferor is considered the owner under subpart E of part I of subchapter J, and*

*(2) if, after the transfer of such property to the trust, such property is not includible in the gross estate of the transferor for purposes of chapter 11*

For the 99.5% Act, Section 5

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# Valuation Rules

- Appraisals commonly consider valuation adjustments for:
  - Marketability
  - Minority interests
  - Blockage
  - Taxes on Built-in Gain

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# Valuation Rules

## *For the 99.5% Act*

- General Valuation Rules
  - The “Non-business” assets of an entity transferred are valued as if the asset were transferred directly (non-actively traded interests)
  - Non-business assets means any asset not used in the active conduct of a trade or business
  - “Passive assets” are not treated as used in the active conduct of a trade or business
- Minority Discounts
  - No discount allowed if the transferee and family members have control or majority ownership (non-actively traded interests)

For the 99.5% Act, Section 6

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# Valuation Rules

## *For the 99.5% Act*

- **“Non-Business Assets”**
  - Asset not used in the active conduct of a trade or business
  - **No valuation discounts** – assets valued as if directly the transferor had transferred the assets directly to the transferee

For the 99.5% Act, Section 6

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# Valuation Rules

## *For the 99.5% Act*

- **“Non-Business Assets”**
  - **Exclusions**
    - IRC §§ 1221(a)(1) or (2) – basically inventory & A/R
    - Real property with material participation (750 hour requirement)
  - **Exception** for working capital

For the 99.5% Act, Section 6

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# Valuation Rules

## *For the 99.5% Act*

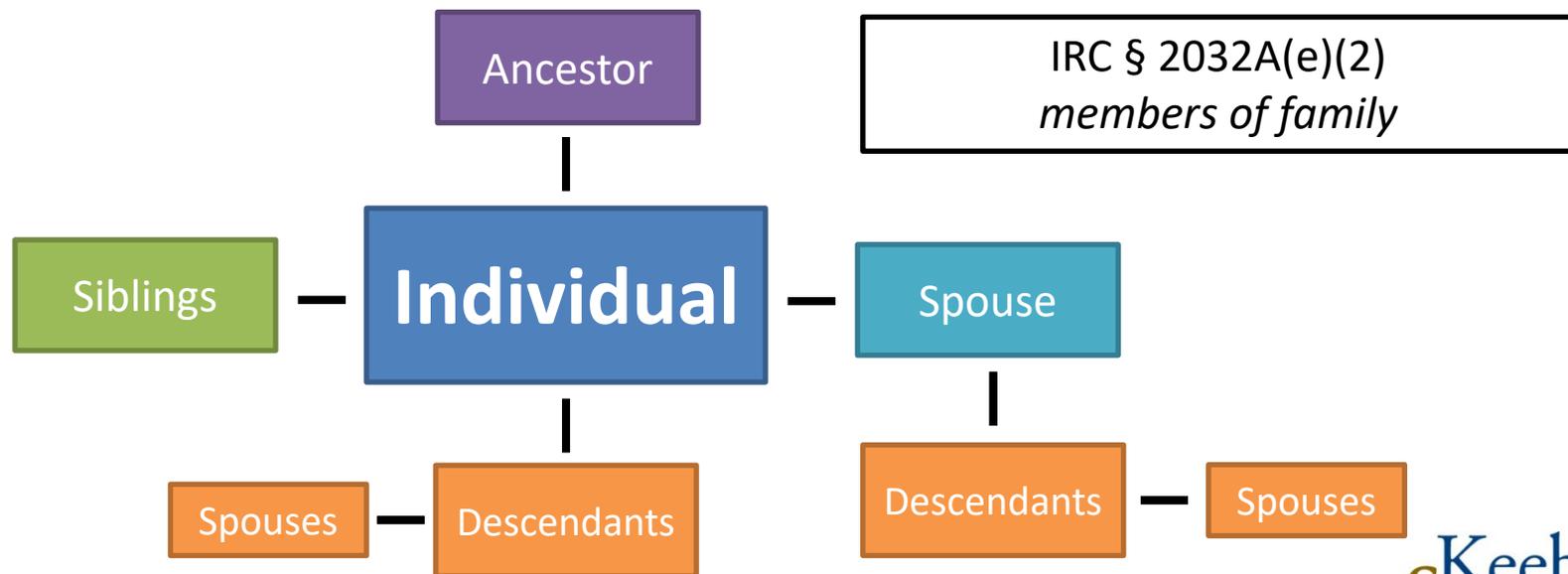
- **“Non-Business Assets”**
  - **Look-thru rule:**
    - Designed to prevent any discount for non-business assets held in a lower-tier entity
    - 10% ownership interest threshold
    - The upper-tier entity is treated as if directly owning its ratable share of the lower-tier entity’s assets

For the 99.5% Act, Section 6

# Valuation Rules

## *For the 99.5% Act*

- **Limitation on Minority Discounts**
  - Applies if the transferor, transferee, and family members together have: (1) control or (2) majority ownership



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# Valuation Rules

## *For the 99.5% Act*

**(2) MEMBER OF FAMILY** The term “member of the family” means, with respect to any individual, only—

**(A)** an ancestor of such individual,

**(B)** the spouse of such individual,

**(C)** a lineal descendant of such individual, of such individual’s spouse, or of a parent of such individual, or

**(D)** the spouse of any lineal descendant described in subparagraph (C).

For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as the child of such individual by blood.

IRC § 2032A(e)(2)

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# Valuation Rules

## *For the 99.5% Act*

The new valuation rules are effective to transfers made after the date of enactment.

For the 99.5% Act, Section 6

# Valuation Rules

## *Example*

	Before Enactment	After Enactment
Gross Value	\$10,000,000	\$10,000,000
Marketability Adjustment	(2,000,000)	(0)
Minority Interest Adjustment	(1,200,000)	(0)
Net Value	\$6,800,000	\$10,000,000
Estate Tax @ 45%	\$3,060,000	\$4,500,000

For the 99.5% Act, Section 6

# Valuation Rules

## *Example/Summary*

Operation	Trade or Business	Owned by	Minority Interest Discount	Marketability Discount	Subtract out Non-Business Assets
Automobile Dealership	Yes	Family Members	No	Yes	Yes
Apartment Building – Material Participation	Yes	Family Members	No	Yes	Yes
Triple Net Lease Real Estate – No Material Participation	No	Family Members	No	No	N/A – entire enterprise treated as a non-business asset

For the 99.5% Act, Section 6

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# GRATs

*All Proposals are Similar*

- GRAT Changes Proposed
  - Minimum 10-year term
  - Maximum term of the life expectancy of the annuitant plus 10-years
  - Remainder interest not less than an amount equal to the greater of:
    - 25% of trust FMV
    - \$500,000



For the 99.5% Act, Section 7

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# GRATS

*For the 99.5% Act –*

The GRAT rules are effective to transfers made after the date of enactment.

For the 99.5% Act, Section 7

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# Grantor Trusts

*For the 99.5% Act*

- Grantor Trust Changes
  - Assets in grantor trusts are included in the grantor's estate
  - Distributions from grantor trusts during the life of the deemed owner are taxable gifts
  - The assets of a grantor trust are deemed to be a gift if the grantor trust status is “turned off”



For the 99.5% Act, Section 8  
New IRC § 2901(a)

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# Grantor Trusts

## *For the 99.5% Act*

- Changes apply to
  - Trusts created after enactment
  - Transfers made to pre-existing trusts after enactment
  - Sales to pre-existing trusts

Existing grantor trusts to  
be grandfathered

For the 99.5% Act, Section 8  
New IRC § 2901(c)

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# Grantor Trusts

## *President Obama's Final Budget*

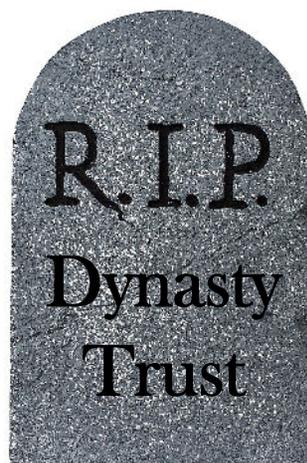
- Grantor Trust Changes
  - Estate includes
    - Assets in grantor trusts, if the trust engages in a sale or exchange with the grantor
  - Gift tax recognition
    - If such a grantor trust as above terminates and becomes a non-grantor trust
  - Specific exemptions for:
    - GRATs
    - QPRTs
    - ILITs

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# GST Exempt Trusts

*For the 99.5% Act*

- GST Changes
  - Inclusion ratio of any trust other than qualifying trust must be 1
  - Qualifying trust must terminate not greater than 50-years after the trust is created
  - Pre-existing trusts must terminate within 50-years of enactment



For the 99.5% Act, Section 9

New IRC § 2642(h)

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# GST Exempt Trusts

*For the 99.5% Act*

*Proposed New IRC § 2642(h)*

## **(H) ELIMINATION OF GST EXEMPTION FOR CERTAIN TRUSTS.—**

### **(1) IN GENERAL.—**

#### **(A) TRANSFERS FROM NON-QUALIFYING TRUSTS. —**

In the case of any generation-skipping transfer made from a trust that is not a qualifying trust, the inclusion ratio with respect to any property transferred in such transfer shall be 1.

#### **(B) QUALIFYING TRUST.—**

For purposes of this subsection, the term ‘qualifying trust’ means a trust for which the date of termination of such trust is not greater than 50 years after the date on which such trust is created.

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# GST Exempt Trusts

## *President Obama's Final Budget*

- GST Changes
  - GST exemption terminates 90-years after the trust is created, generally
  - i.e. the inclusion ratio is reset to one

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# Annual Exclusion Gifts

## *Similar Proposals*

- Annual Exclusion Gift Simplification
  - For the 99.8% Act & For the 99.5% Act
    - \$10,000 limit per donee
    - \$20,000 limit per donor
  - President Obama's Final Budget
    - \$14,000 limit per donee  
(i.e. the annual exclusion at the time)
    - **\$50,000 limit per donor**

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# Estate Tax Policy Shift

- Action Items

- Discuss impacts of possible legislation with clients
- Project estate values with valuation discount changes
- Potentially accelerate the funding of GRATs and other Grantor Trusts
- Potentially accelerate IDGT sales
- Be organized to use the lifetime exclusion prior to enactment
- Be prepared to make taxable gifts prior to enactment
- Consider recommending estate tax be paid for 2020 and 2021 deaths
- Be wary of DSUE ordering rules
- Capture valuation discounts

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# Questions

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# Thank You

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## SAMPLE LANGUAGE FOR ASSIGNMENT NOT GREATER THAN EXEMPTION

### Sample Language for Assignment Not Greater Than Exemption

**I, Jonathan G. Blattmachr**, in consideration of \$10 cash received from Mitchell M. Gans, as Trustee, of the trust dated September 31, 1911 (known as the Blattmachr Family Trust of 1911) and its successors and assigns, the receipt of which is hereby acknowledged, and \$10 cash received from Betsy M. Blattmachr, my wife who is a United States citizen, the receipt of which is hereby acknowledged, **hereby make the following assignments of all of my right, title and interest in [Description of Property] (“the Property”) as follows:**

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# SAMPLE CONTINUED

**To the Trustees** of the Blattmachr Family Trust of 1911 of **that fractional share** of the Property (a) the **numerator of which is the lesser of (i) the entire value**, as finally determined for Federal tax purposes as of this date, of the Property or (ii) **the fair market value of the Property**, as finally determined for Federal tax purposes as of this date **(including taking in account any changes made by legislation enacted after this date but applicable to transfers made on this date)**, equal to the amount of the **so-called Gift Tax Exemption** as of the date of this assignment (based upon the maximum amount allowable as a credit under Section 2010 of the Internal Revenue Code of 1986 as amended, including any amendments made after this date which determine that amount of such credit) reduced by the amount of such Exemption I have used or been deemed to have used by any prior transfers by me before this transfer including those made earlier this calendar year, and (b) the denominator of which is the value, as finally determined for Federal tax purposes, as of this date, of the Property,

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# SAMPLE CONTINUED

**To Betsy M. Blattmachr the excess value**, as of the date hereof, if any, as finally determined for Federal tax purposes, as of the date hereof, **of the Property not assigned above** to the Trustees of the Blattmachr Family Trust of 1911;

I authorize Betsy M. Blattmachr, individually as assignee of any interest in the Property and as the principal beneficiary of the Blattmachr Family Trust of 2011 to renounce and disclaim any of the Property assigned above and to the extent, if any, she makes any such renunciation and disclaimer the property so renounced and disclaimed that otherwise has passed to her directly or to the trust shall revested in me.