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The American Families Plan

On April 28, President Biden addressed a joint session of Congress and announced the American Families Plan (“the Plan”), portrayed as an investment in the nation’s children, families and economic future. The Plan contains numerous tax breaks for low and middle earner taxpayers and numerous tax increases for taxpayers “making over \$400,000 per year”. It should be noted that as of now, the plan is merely a “wish list” of legislation that the President would like to see enacted into law. It remains to be seen which, if any, of the proposals will become law. Further, at this point it is impossible to predict what the effective date will be of any of the provisions that do become law. Accordingly, the following summary of some of the more salient proposals to increase taxes should be considered nothing more than a “heads-up” list of things to watch for as the year progresses. The Plan, if enacted, would:

Restore the top individual income tax to 39.6% (to what it was before the 2017 Tax Cuts and Jobs Act) applicable only to those “within the top 1%”.

Increase the tax on capital gains and qualified dividend income to 39.6% on “households making over \$1 million”. It appears that the 39.6% rate will not apply to all the capital gains and qualified dividend income for those households, however. There was no discussion of an income-based phase-in for this rule.

Make Section 1031 exchanges inapplicable to gains greater than \$500,000.

Make the excess business loss rules permanent. Currently, the law limiting those losses is set to expire in tax years beginning January 1, 2026.

Eliminate the step-up in basis for assets held at death for gains in excess of \$1 million. The Plan would also tax the gains in excess of \$1 million unless the property is donated to charity. The Plan would protect family-owned businesses and farms so that tax would not have to be paid when given to heirs who continue to run the business or farm.

Revise the 3.8% net investment income tax to close “loopholes” that make the tax “inconsistent across taxpayers”. The Plan would apply the tax consistently to those making over “\$400,000”.

We will be carefully monitoring the negotiations over these provisions and will keep you apprised of any relevant developments.

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