



July 28, 2022

The Honorable Ron Wyden
Chairman
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard Neal
Chairman
U.S. House Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Mike Crapo
Ranking Member
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Kevin Brady
Ranking Member
U.S. House Committee on Ways and Means
1139 Longworth House Office Building
Washington, DC 20515

Re: Administration's Fiscal Year 2023 Revenue Proposals (Green Book) Trust and Estate Tax Provisions

Dear Chairmen Wyden and Neal, and Ranking Members Crapo and Brady:

The American Institute of CPAs (AICPA) is commenting on several trust and estate related tax proposals in the Department of the Treasury's ("Treasury") [*General Explanations of the Administration's Fiscal Year 2023 Revenue Proposals*](#) ("Green Book"), issued March 2022. Specifically, we are commenting on the following Green Book proposals:

- Strengthen taxation of high-income taxpayers: Reform the taxation of capital income: Treat transfers of appreciated property by gift or on death as realization events (Page 34 of Green Book);
- Modify estate and gift taxation: Modify income, estate, and gift tax rules for certain grantor trusts (Page 40 of Green Book);
- Modify estate and gift taxation: Improve tax administration for trusts and decedents' estates: Reporting of estimated total value of trust assets (Page 45 of Green Book);
- Improve tax administration and compliance: Enhance accuracy of tax information: Electronic filing of forms and returns (Page 70 of Green Book); and
- General comments on estates

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Strengthen Taxation of High-Income Taxpayers: Reform the Taxation of Capital Income: Treat Transfers of Appreciated Property by Gift or on Death as Realization Events (Page 34 of Green Book)

The AICPA previously submitted concerns¹ with the proposal, issued originally in May 2021, in the Treasury’s *General Explanations of the Administration’s Fiscal Year 2022 Revenue Proposals* and also as part of the American Families Plan (AFP) to reform the taxation of capital income and treat transfers of appreciated property by gift or on death as realization events. The AICPA also submitted similar comments² to Congress on the trust and estate provisions in the September 2021 [House Ways and Means Committee reconciliation language](#). The AICPA is currently concerned that some of the provisions in the 2023 Treasury Green Book, issued March 2022, regarding valuation rules for certain transfers of assets are inconsistent with well-established valuation principles and could result in valuations that do not reflect the true economic value of transferred assets. These inconsistencies could, in turn, unjustly negatively affect taxpayers.

Our valuation-related issues with the Green Book proposal on reform of taxation of capital income and treating transfers of appreciated property by gift or on death as realization events are from business appraisers’ perspectives, including our concerns that the proposal (a) will create two different regimes for valuation, and (b) assumes all taxpayers have equal access to the same level of information.

The AICPA is concerned that the proposal precludes the application of a discount when nonbusiness assets are transferred by the taxpayer. This treatment will result in two different regimes for valuation: one for transfers of these nonbusiness assets for income tax purposes (e.g., on normal business transactions, income tax reporting, and charitable gifts, etc.), and a second for gift and estate tax purposes, which creates confusion regarding post-transfer basis and perhaps an opportunity for taxpayers to create artificial transactions to “game” the basis rules to exploit the lowest tax result.

The AICPA is also concerned with the requirement that a partial interest owner provide a value that represents a proportional share of the value of the entire entity, which assumes that every interest holder, including those lacking control over the property, has equal access to adequate information to determine the fair market value of the entire property. This assumption is contrary to reality for many minority interest holders, who often are not privy to the same scope of information available to controlling shareholders. Although the issues regarding access to information by holders of partial interests, especially minority interests, has been and continues to

¹ See AICPA letter, “[Green Book American Families Plan Proposal - Reform the Taxation of Capital Income and Treat Transfers of Appreciated Property by Gift or on Death as Realization Events](#)” (August 24, 2021), and AICPA letter, “[Tax Provisions in House Reconciliation Legislation or Being Considered](#)” (October 1, 2021).

² See AICPA letter, “[Tax Provisions in House Reconciliation Legislation or Being Considered](#)” (October 1, 2021).

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be a valuation issue, we are concerned that the proposal requires that the valuation *must* be based on the full value of the entire property. This would be a new requirement, and considering difficulties obtaining information to value the whole asset, it is not reasonable. Whether the valuation is of an individual property with multiple owners or of an entity with multiple members, partners, or shareholders, this difficulty in accessing data needs to be considered in any legislation.

Modify estate and gift taxation: Modify Income, Estate, and Gift Tax Rules for Certain Grantor Trusts (Page 40 of Green Book)

The Green Book proposal states the transfers would include “sales as well as the satisfaction of an obligation (such as an annuity or unitrust payment) with appreciated property.” “Transfers” should not include existing sales and loans with pre-enactment grantor trusts where in-kind distributions may be required to make the loan payments as well as the use of in-kind distributions for grantor retained annuity trust (GRAT) payments for a pre-enactment GRAT. Treating such payments otherwise would be fundamentally unfair for existing transactions. For example, for a GRAT or grantor charitable lead annuity trust (CLAT), the gift is complete in year one, so when the assets pass to the remainder beneficiaries, it should not be a further gift or other transaction that triggers taxation. Another example of our concern is existing GRATs that may need to satisfy annuity payments with in-kind distributions. For example, consider that a 2-year GRAT created in December 2021 will make its final annuity payment in December 2023. It is likely the final annuity payment would need to be satisfied in kind, and under the Green Book proposal, such payment would be a realization event that would trigger gain recognition. Such a proposal would produce an unfair result for a taxpayer who entered into the transaction under current law.

The proposal would also provide that the payment of income tax on the income of a grantor trust is a gift, and the amount of the gift is the unreimbursed amount of the income tax paid. The AICPA believes that this proposal is problematic. If the grantor owner of a grantor trust owes the income tax liability, paying this liability should not incur an additional gift. Being reimbursed regularly for this liability could cause estate tax issues as the trust would be regularly benefitting the grantor. If the goal is to encourage taxpayers to not pay income tax on grantor trusts, the proposal should instead provide that the income tax liability for a grantor trust lies with the trust as opposed to the grantor owner. Otherwise, forcing the taxpayer to be deemed to be making additional gifts or take on the estate tax risk with reimbursement is not fair to the taxpayer.

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Modify estate and gift taxation: Improve Tax Administration for Trusts and Decedents' Estates: Reporting of Estimated Total Value of Trust Assets (Page 45 of Green Book)

We do not have any comments on the proposals regarding expanding the definition of executor, increasing the limit on the reduction in value of special use property, or extending the 10-year period for certain estate and gift tax liens.

However, we are concerned with the proposal to require reporting of estimated total value of trust assets. This reporting requirement for a taxable year would apply to each trust whose estimated total value on the last day of the taxable year exceeds \$300,000 or whose gross income for the taxable year exceeds \$10,000. These low thresholds would capture a substantial number of trusts - many of which are likely of lower risk to the IRS due to the lower dollars at stake.

There is also concern that the proposal may be overly burdensome in imposing an informational reporting requirement for many domestic trusts - similar to the one for foreign trusts with U.S. owners. In addition, estimating the total value of trust assets, which may include wholly owned and partially owned properties and entities, could be time consuming and difficult due to the accessibility of the information and the application of valuation discounts. If the proposal is found to be essential, we recommend that the \$300,000 and \$10,000 thresholds be increased so that only higher risk trusts are covered.

We suggest that if IRS needs more information, the IRS and Treasury consider adding the requested information to Form 1041 as initially proposed in the Greenbook as opposed to some other method such as requiring a separate filing, which would be much more burdensome on the taxpayer. If these informational requirements would apply to grantor trusts as well, then the filing requirements for a grantor trust may also need to be modified as currently many grantor trusts do not need to file Form 1041 if they qualify under an alternate method of filing.

We also request additional clarity regarding the approaches used for estimating total value of trust assets. We recommend allowing a practical approach, such as using the cost basis of assets, that would not require annual appraisals and would be unduly burdensome.

Improve Tax Administration and compliance: Enhance Accuracy of Tax Information: Electronic Filing of Forms and Returns (Page 70 of Green Book)

The AICPA supports the Green Book proposal to improve tax administration and enhance the accuracy of tax information regarding electronic filing of forms and returns. The AICPA has previously requested that IRS provide electronic filing for the Forms 706, 706 NA, and 709.³ The

³ See AICPA letter, "[Comments on Electronic Filing \(e-filing\) of Forms 706, 706-NA, and 709](#)" (December 4, 2020).

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AICPA agrees with the proposal to require electronic filing for individuals with gross income of \$400,000 or more and for income, estate, or gift tax returns of all related individuals, estates, and trusts with assets or gross income of \$400,000 or more in any of the three preceding years.

General Comments on Estates

Taxing estates the same as trusts for many of the provisions in the Green Book is problematic.⁴ The AICPA recommends⁵ that estates be treated similar to married filing separately taxpayers for all estate provisions in the Green Book, as well as existing law (such as income tax and net investment income tax). This recommendation would restore estates to their federal tax position from 1954-1986. In addition, qualified disability trusts established for the benefit of disabled individuals should be taxed in the same manner as a married person filing a separate tax return for income and net investment income tax purposes.

For purposes of these tax proposals, estates should be treated as if they were a continuation of the deceased individual and tax them as such. An estate serves a unique role as being the successor to an individual for a limited period of time during which it winds up the affairs of the deceased individual before distributing the assets to the individual's heirs. Unlike trusts, estates are only created due to a death - one individual cannot create multiple estates.

Trusts may exist in perpetuity in some states, while an estate is time limited. Most probate courts strive to expedite the collection and disposition of assets, frequently requiring explanations for any delay in distributing the assets and closing the estate. The executor cannot unduly prolong the period of administration of an estate.⁶ If the administration of the estate is unreasonably prolonged, the estate is considered terminated for federal income tax purposes after the expiration of a reasonable period for the performance by the executor of all the duties of administration.⁷

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The AICPA is the world's largest member association representing the CPA profession, with more than 421,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and

⁴ See, e.g., Section 138150 regarding IRC section 1202 gains and qualified small business stock, Section 138203 regarding the net investment income tax, Section 138204 regarding the IRC section 199A deduction, and Section 138206 regarding the 3% surcharge (and present law).

⁵ See AICPA letter, "[2021 AICPA Compendium of Tax Legislative Proposals – Simplification and Technical Proposals](#)" (October 5, 2021).

⁶ Reg. § 1.641(b)-3.

⁷ For qualified revocable trusts that the trustee elects to treat and tax as part of the estate under IRC section 645, the statute itself provides a termination date for such treatment.

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prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please feel free to contact Eileen Sherr, Director – AICPA Tax Policy & Advocacy, at (202) 434-9256 or Eileen.Sherr@aicpa-cima.com; Irene Estrada, Chair of the AICPA Trust, Estate, and Gift Tax Technical Resource Panel, at ((703) 628-5243 or irene.c.estrada@pwc.com; Lauren Pfingstag, AICPA Director of Congressional & Political Affairs at (407) 257-0607 or Lauren.Pfingstag@aicpacima.com; or me at (601) 326-7119 or JanLewis@HaddoxReid.com.

Sincerely,



Jan F. Lewis, CPA
Chair, AICPA Tax Executive Committee

cc: Members of the Senate Committee on Finance
Members of the House Committee on Ways and Means
Mr. Thomas Barthold, Chief of Staff, Joint Committee on Taxation
The Honorable Charles P. Rettig, Commissioner, Internal Revenue Service
The Honorable Lily Batchelder, Assistant Secretary for Tax Policy, Department of the Treasury