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Peapack Private

Wealth Management

Planning issues arise at every stage of life. Each quarter, we'll take a deep dive into issues our clients find meaningful. It's tax season, so we are focusing on planning to maximize after-tax assets, for you and your family. Please reach out to your primary wealth advisor or to our authors with your questions or ideas for future articles. Our guidance can help you achieve your financial goals.

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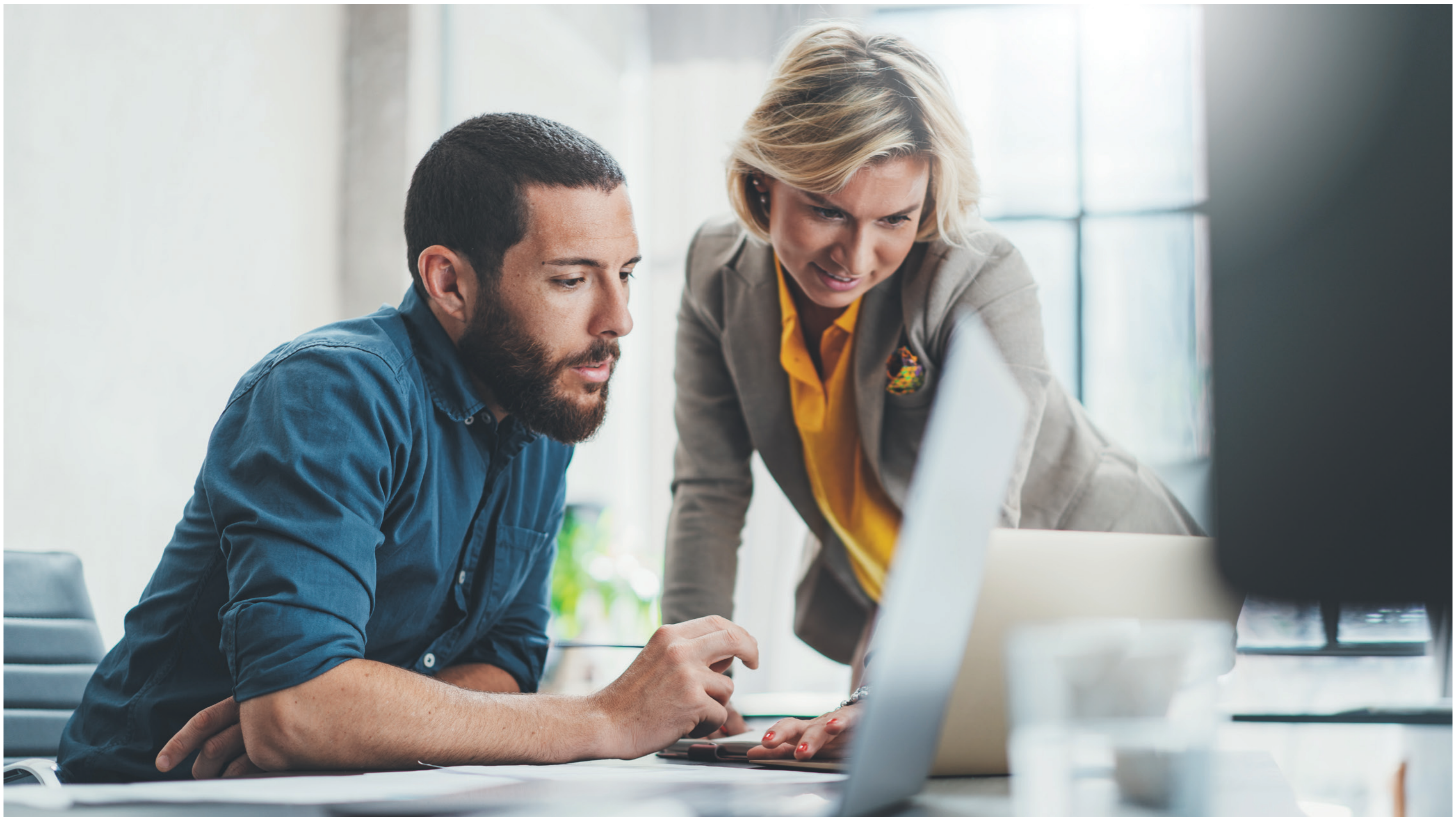
Allocate Your Assets for Maximum Tax Efficiency

David G. Dietze, JD, CFA, CFP®



Investment management for private clients presents unique challenges. Near the top is that profits generated cannot be enjoyed until they've passed through the tax filter. Understanding the tax implications of investing allows some control over the amount of taxes paid even if the path of the financial markets is beyond control.

In a Nutshell

The tax tail should never wag the investment dog. Make sure you have an appropriate overall asset allocation for your nest egg, carefully balancing considerations such as risk and growth before optimizing for tax efficiency.

Equity profits are generally taxed at lower rates than fixed income interest. However, that is true only in taxable accounts, not in tax sheltered accounts like IRAs and company retirement accounts. Therefore, subject to maintaining an appropriate overall asset allocation, focus your stocks in taxable accounts and your bonds in tax sheltered accounts.

Asset Allocation Is by Far the Most Important Determinant of Your Investment Success

Research[1] indicates that 90% of your investment return is dictated by asset allocation. Stocks trump bonds over the long term. Stock investors pay the price for the potentially higher returns with historically greater volatility. For that reason, most investors should maintain some allocation to fixed income. Fixed income evens out the ride and provides stability during sharp stock market declines.

Bottom line: Before focusing on which assets belong in what sort of account, your first analysis should always be what type of portfolio makes sense regardless of your mix of taxable and tax-sheltered accounts. Don't choose your asset classes solely based on the tax flavor of your investment accounts.

[1] *Investopedia, November 21, 2020*

To Plan for Taxes, Understand Several Key Concepts

The highest federal tax rate for ordinary income is 37%. This applies to wage income, bond interest, and other so called "ordinary income." This does not include the 3.8% Medicare surcharge applicable to high earners. State and local taxes may also apply.

Distributions from IRAs and pensions are taxed as ordinary income, although in some states significant amounts are excludible from state taxes.

One exception to the rule that bond interest is taxed as ordinary income is municipal bonds. The interest on those is generally exempt from Federal tax; it can be exempt from state and local tax, too, if issued in the investor's home state. Some municipal bonds are not exempt and are taxed as ordinary income.

Using tax exempt bonds does not moot the general rule to house stocks in taxable accounts. Because tax exempt bonds normally yield less than taxable bonds, investors are still better off focusing stocks in taxable accounts and holding taxable bonds in tax sheltered accounts.

Stocks Are Taxed at Lower Rates Than Bonds

Stocks afford significant tax advantages when held in taxable accounts. If held long term, meaning more than a year, the tax rate on profits ranges from zero to 20%. The Medicare surcharge still applies to high-income taxpayers.

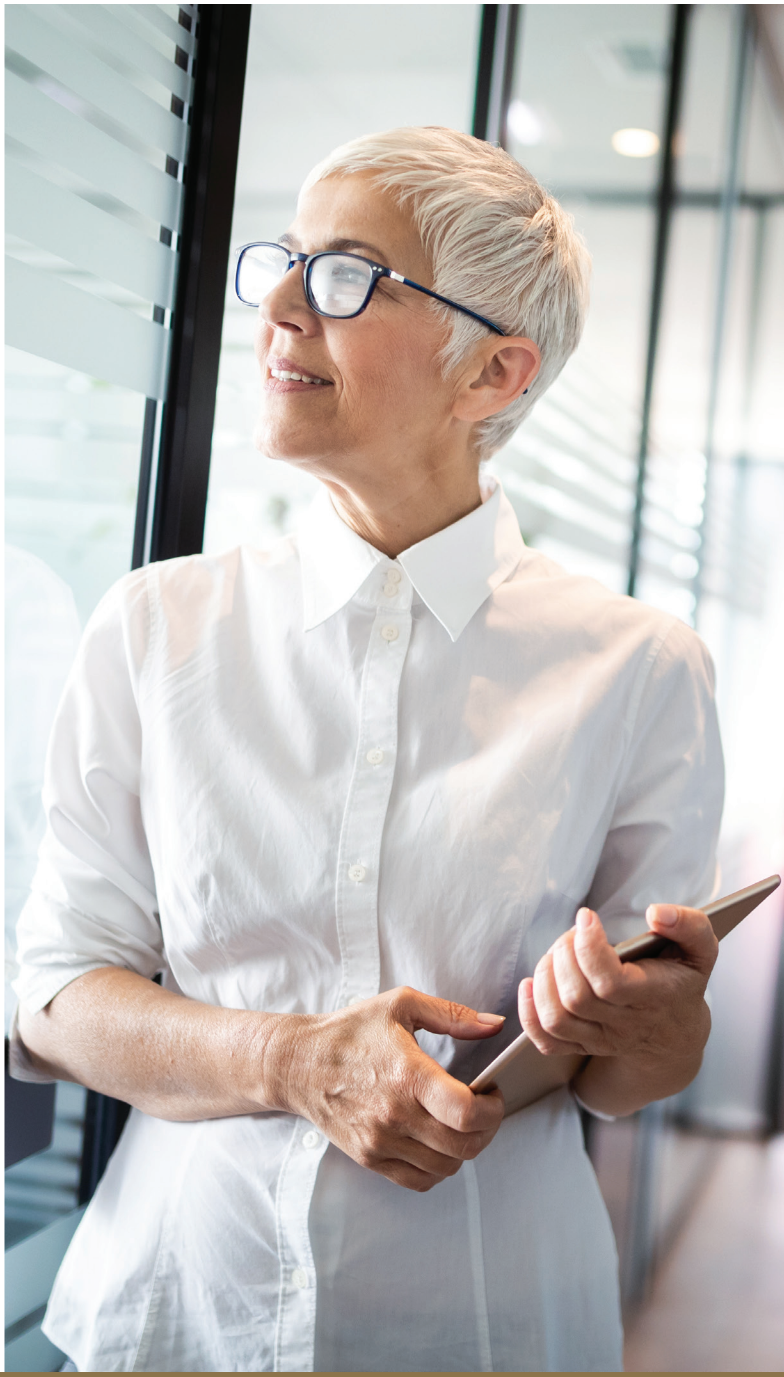
Qualified dividends, meaning most dividends paid out on stocks, are also taxed at the lower capital gains rate. Some dividends are not qualified. These include real estate investment trusts (REITs) and master limited partnerships (MLPs). The rationale for not affording preferential tax treatment to their dividends is that profits are not taxed at the entity level, but simply passed through to investors. Some distributions, particularly from MLPs, are not taxed at all and deemed a return of capital; however, an investor's cost basis in the asset is lowered by the amount of the distribution. Preferred stock dividends are generally taxed like qualified dividends. That's not true for all preferreds, so the nature of any payout must be investigated.

By contrast, distributions from IRAs and most other retirement accounts are taxed at ordinary income rates, even if the source of the distribution was from stock profits. Some planners call it turning gold into dross if you hold stocks in tax sheltered accounts like IRAs.

Controlling the Timing of the Taxable Event Allows For Superior Tax Results

Common stocks offer significant tax advantages to investors to the extent profits are in the form of capital appreciation. Investors can defer taxation on those gains until sale. Deferring taxes reduces the present value of that burden. This planning opportunity is not available for stocks held in retirement account.

Assets held primarily for current income are not as attractive in taxable accounts. That's because the profits are taxed currently as the income is paid out, and can't be deferred, even if their need can be deferred.



Stock Losses Can Be Used to Offset Realized Gains, But Only if Held in Taxable Accounts

If a stock drops, it can be sold, and the loss realized. That realized loss first offsets any current gain on other asset sales. If realized losses exceed realized gains, up to $3,000 of that excess can be used against other income. Any loss that cannot be used in the current year can be carried forward indefinitely for use in future years, at least against Federal taxes. However, investment losses in tax sheltered accounts cannot offset current income or stock gains. This is one more reason stock should be focused in taxable accounts, fixed income in tax sheltered ones.

Contributions to Tax Sheltered Accounts Are Strictly Limited So Less Risky Investments are More Appropriate There

Contributions to IRAs, company retirement accounts, and other tax-sheltered accounts are capped. Losses in those accounts do not trigger an opportunity to replenish. That's not the case in taxable accounts. This is yet more reason that more volatile holdings like stocks are more appropriate in taxable accounts, while less volatile holdings like bonds more suitable in tax sheltered accounts.

Basis Step Up an Important Tax Benefit

One of the most important tax benefits from stocks is the so-called basis step up. Upon an investor's death, the cost basis of the asset is "stepped up" to the current market value, eliminating from taxation any unrealized gain. That benefit is not present in traditional IRAs or company retirement plans; an heir must pay taxes on all profits and untaxed contributions made to those accounts, even if some of the profits would have been eliminated via the step up rule had the underlying investment been held in a taxable account.

Because taxable accounts can take advantage of the step-up benefit, assets with more growth potential belong there, to sidestep the maximum gain at death.

Some Tax-Sheltered Accounts Are Actually Tax-Free Accounts, and Afford Good Planning Opportunities

Most tax-sheltered accounts are tax deferred: the eventual withdrawals are taxed at ordinary income tax rates. However, some tax-sheltered accounts, like 529s and Roth IRAs, offer tax free withdrawals if certain conditions are met. Investors should, as between tax-deferred accounts versus tax-free accounts, focus their potentially faster growing assets, like stocks, in the latter to maximize tax-free growth. Note that IRAs inherited from anyone but a spouse typically require withdrawals at faster rates than traditional tax-sheltered accounts; focus your potentially slower growing asset classes, like fixed income, in the former.

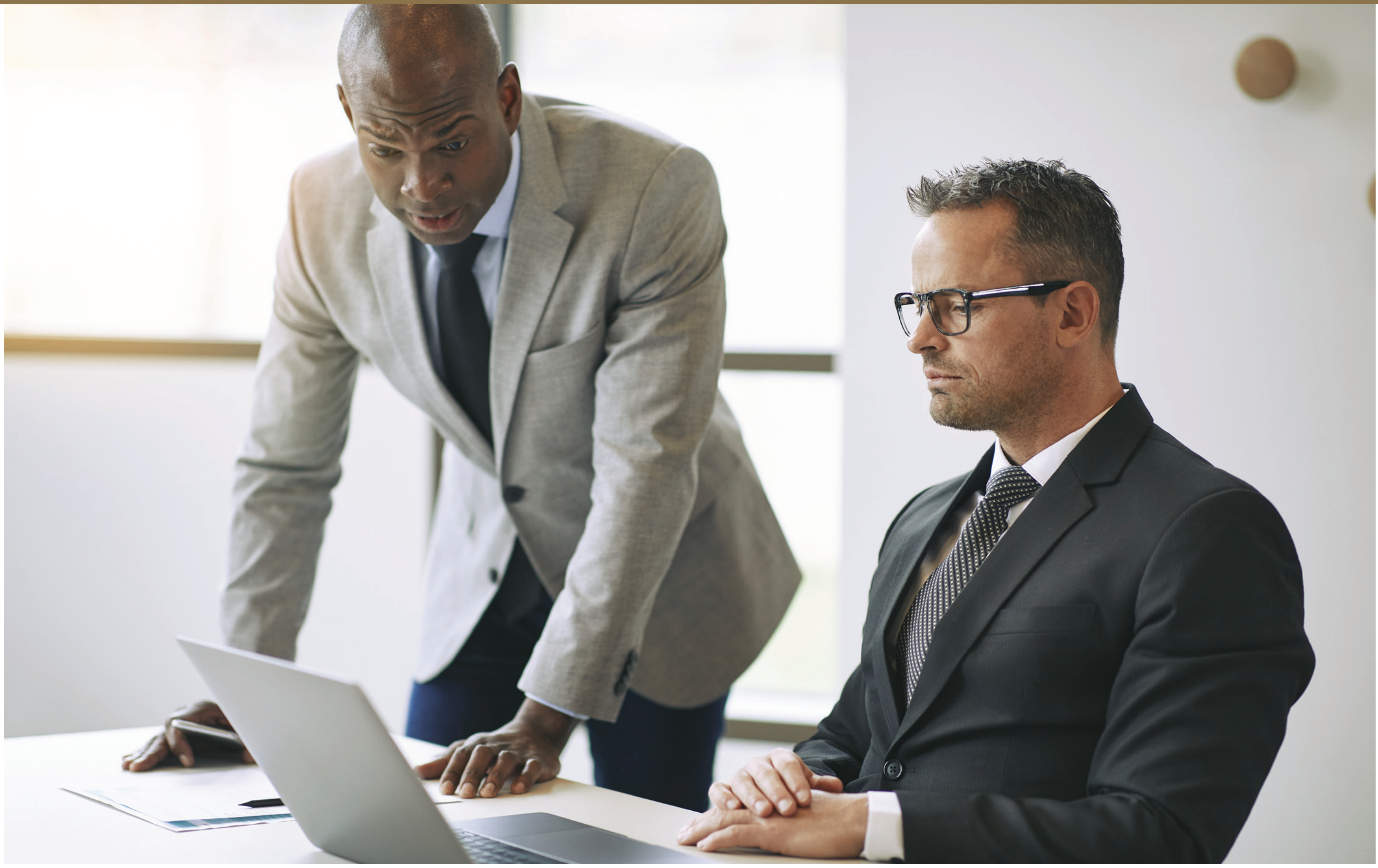
Different Asset Allocations in Different Accounts Will Produce Different Investment Results

Because the asset allocation of taxable accounts focused in equities, on the one hand, and IRAs focused in fixed income, on the other, will not be the same, they should not be expected to perform similarly. In bull markets, the IRAs will lag, while in downturns they should be more resilient. Focus on the overall, combined account performance.

Conclusion

Consider carefully how to allocate over taxable and tax-sheltered accounts your overall asset allocation. Stocks enjoy significantly lower tax rates than does fixed income when held in taxable accounts and should be held there, subject to overall appropriate diversification.

Contact David at (908) 598-1717 or ddietze@pgbank.com with any questions.



Implications of the Biden Tax Reform Proposal

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Jean McAllister, CFP®

Recently, President Biden announced his economic stimulus plans and with it several significant potential tax changes. Aligning with campaign promises, the Biden Administration's initial tax proposal would repeal many of the tax cuts provided in the Tax Cut and Jobs Act passed during the prior Administration. The proposal is positioned as necessary to offset the economic impacts caused by the COVID pandemic and related stimulus payments as well as to assist with financing an ambitious planned infrastructure program.

The proposed plan, potentially the first major federal tax increases since 1993, has far reaching implications for individuals, corporations, and estates. While the specifics are still being determined, the following is a summary of key takeaways with potentially wide-reaching impact. If enacted into law as currently envisioned, several elements are concerning from an individual taxpayer's perspective:

Income tax

For taxable incomes over $400,000, the proposal includes:

- Increasing the top individual income tax rate to 39.6%.
- Applying the 12.4% social security payroll tax (split evenly at 6.2% between employer and employee) on wages above $400,000; currently this tax is not applied to wages above $142,800.
- Limit itemized deductions through a combination of -
    - Capping the tax benefit of itemized deductions to 28%; and,
    - Reducing itemized deductions by 3% for every $1 of taxable income above $400,000 ("PEASE" limitation)
- Eliminating Section 1031 "like-kind" exchanges of real estate.
- Reinstating prior income thresholds for application of the Alternative Minimum Tax.

In addition, the proposal would eliminate the preferred tax rate of 20% on long term capital gains (and qualified dividends) for individuals with taxable income above $1 million and treat them as ordinary taxable income (taxed at 39.6%).

Estate and Gift tax

With respect to transfer taxes, some of the proposed changes under consideration include:

- Reducing the federal estate tax exemption from $11.7 million to $3.5 million per individual.
- Increasing the tax rate on taxable estates/gifts to 45% from the current rate of 40%.
- Limiting the ability to shelter lifetime gifts to $1 million.
- Limiting the duration of trusts that avoid estate/generation skipping taxation.
- Restricting the use of valuation discounts.

An additional key concept being discussed is the repeal of the so-called "step-up in basis" rule. Under current law, when a taxpayer passes away the cost basis of assets owned is "re-set" to reflect current market values. As a result, when heirs inherit the assets the potential capital gain (or loss) upon sale is based on this stepped-up value.

The Biden tax plan proposes to eliminate the stepped-up basis rule and instead, treat the passing of an individual as a forced recognition of income, taxing any unrealized capital gains held at the time of death. A $1 million gain exemption has been discussed, however many taxpayers with assets that have considerable unrealized appreciation would be impacted by this provision.

It is important to understand that the above items are proposed changes to existing tax law; it remains to be seen what actually occurs when Congress begins the process of debating any such changes. Given the current political environment, it is quite possible that some form of many (or all) of the above items could be enacted into law as early as mid-2021. Further complicating the issue is Congress' ability (though not often used) to make all or a portion of any changes retroactive to the beginning of the 2021 tax year.

If legislation is passed and provisions are made retroactive to January 1, 2021, this would limit any ability to front-run changes through traditional income reducing strategies. However, if the outlined changes are enacted, effective in 2022, there are strategies and actions to discuss with your tax and wealth advisor as soon as possible, including:

- Accelerate income recognition to 2021 to avoid the proposed top bracket of 39.6% and imposition of additional social security taxes on all wages.
- Consider converting a portion of tax deferred retirement assets to Roth IRAs.
- Realize capital gains (and defer loss harvesting) in portfolios and among real estate and business assets.
- Defer recognition of business expenses to 2022.
- Consider exercising Non-Qualified Options earlier than anticipated to avoid higher tax brackets and social security taxes.
- Exercise Incentive Stock Options to avoid potentially punitive AMT rules pertaining to any bargain element (difference between market price and exercise price).
- Accelerate itemized deductions into 2021 to maximize tax benefit and avoid any reductions due to PEASE limitations.

Any changes to transfer (estate and gift) tax rules would likely not be made retroactive to January 1, 2021, given the nature of the tax system. With that stated, all individuals should be discussing potentially beneficial estate planning techniques with their attorney and Wealth Advisor/Financial Planner as soon as possible. Items for consideration include:

- Make lifetime gifts to use the existing exemption of $11.7MM.
- Assess the viability of realizing capital gains on highly appreciated assets and "re-setting" the cost basis for heirs while paying tax on the gains at reduced rates.
- Consider establishing trusts in potentially income tax-friendly jurisdictions (i.e. Delaware) to allow for the tax-free enjoyment of assets to continue for multiple generations and perhaps in perpetuity.

As noted, specific provisions of any proposed tax reform will continue to take shape through the coming months in what is likely to be a spirited debate within Congress. Planning discussions can, and should, begin now to discuss the merits of any actions that could serve as a hedge against the most punitive proposed changes. Your Wealth Advisor, Financial Planner, estate attorney and tax professional are best equipped to discuss the viability of any strategies that can operate effectively in advance of any potential changes to ensure they meet your goals and objectives.

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What you need to know about Social Security and Medicare in 2021

Lisa McKnight, MBA, CFP®

2020 has been a year unlike any other, with a pandemic, global health crisis, and a sputtering economy. Compared to that, changes to Social Security and Medicare are far less dramatic, however, it is still important to be aware of them. Each year the Social Security Administration (SSA) adjusts the retirees benefit amounts, how much income is taxable for Social Security purposes and how much beneficiaries can earn before having some of the benefit withheld.

2021 higher benefit amounts and changes to Medicare premiums

In 2021 Social Security benefits have increased by 1.3%. For the average Social Security recipient, that equals an additional $20 a month, from $1,523 to $1,543. The Social Security cost of living adjustment (COLA) 1.3% increase is based on the Consumer Price Index for Urban Wage Earners and Clerical Workers, known as CPI-W from the fourth quarter of 2019 to the third quarter of 2020. That index includes some categories of the goods and services that went up significantly more than 1.3% and some that declined. For example, food prices increased 3.6% from November 2019 to November 2020 and utilities went up 4.4%. Energy prices, however, declined nearly 10%. This decline in energy skewed the COLA increase. Another category that rises higher than inflation is health care, and retirees are big consumers of that.

Medicare Part B is the portion of the health insurance plan for retirees that covers outpatient care, medical equipment, and other medical services. In 2021, the standard monthly premium is $148.50, up from $144.60 in 2020. If you're a high earner, you'll pay more for Medicare Part B premiums. Medicare imposes surcharges on higher-income beneficiaries. The theory is that higher-income beneficiaries can afford to pay more for their healthcare. Instead of doing a 25:75 split with the government, they must pay a higher share of the program costs.

The surcharge is called Income-Related Monthly Adjustment Amount (IRMAA). The income used to determine IRMAA is your adjusted gross income plus muni bond interest from two years ago. Your 2019 income determines your IRMAA in 2021. Your 2020 income determines your IRMAA in 2022. Untaxed Social Security benefits are not included in income for determining IRMAA.

You can see in the table below that just $1 dollar over an income threshold can increase your annual Medicare Part B and Part D premiums by over $1,300 per person, for two years. It is important that you work closely with your wealth advisor to insure you stay within your planned income bracket and avoid unnecessary increased Medicare premiums.

2019 Income				
Individual return	Join tax return	Married filing separate	2021 Monthly Medicare Part B Premium	2021 Monthly Medicare Part D Premium
$88,000 or less	$176,000 or less	$88,000 or less	$148.50	$0.00
above $88,000 up to $111,000	above $176,000 up to $222,000	Not applicable	$207.90	$12.30
above $111,000 up to $138,000	above $222,000 up to $276,000	Not applicable	$297.00	$31.80
above $138,000 up to $165,000	above $276,000 up to $330,000	Not applicable	$386.10	$51.20
above $165,000 and less than $500,000	above $330,000 and less than $750,000	above $88,000 and less than $412,000	$475.20	$70.70
$500,000 or above	$750,000 and above	$412,000 and above	$504.90	$77.10

Figures extracted from medicare.gov

More earnings are subject to Social Security taxation

In 2021, taxpayers will pay 6.2% Social Security tax and a 1.45% tax for Medicare (known together as FICA). The Social Security portion is assessed on the first $142,800 earned, up from $137,700 in 2020. There is no Social Security tax owed on earnings above $142,800. There is no income ceiling threshold for the Medicare tax. The 1.45% is assessed on all earnings. The earnings increase is based on the national average wage index.

President Biden has promised to shore up Social Security and Medicare, proposing additional taxes on income over $400,000 bringing in additional funds to support both systems. This is needed since both systems face long-term financial shortfalls. If passed, Biden's proposal would create a "donut hole," between $142,800 and $400,000 where no Social Security tax would apply. Over time, that donut hole may close as more income is taxed.

Earnings limit will be higher

In 2021, beneficiaries who are collecting Social Security prior to reaching their full retirement age and continuing to work will have benefits reduced if they earn over $18,960, an increase of $720 over 2020. One benefit dollar of every $2 they earn above that limit will be withheld. Once beneficiaries reach their full retirement age there is no penalty for working and taking benefits. Once beneficiaries reach full retirement age, their checks will be recalculated to include the full amount.

Social Security strategies to consider

The first step in maximizing Social Security benefits is to visit the SSA website. Get Social Security estimates and ensure that your earnings record is correct. The SSA website provides estimates for how much you will collect if you start receiving benefits at age 62, your full retirement age (66-67) and at age 70. You and your spouse can start collecting benefits anytime between ages 62 and 70. For the average U.S. wage earner, Social Security retirement benefits will make up 40% of retirement income. As you plan for retirement, knowing the approximate amount you will receive in Social Security benefits may help you determine how much other retirement income you will need to reach your goals. Strategies you can employ include:

1. Delay starting Social Security

For each year beyond your full retirement age that you delay claiming your benefits, they will increase about 8%. You can delay up to age 70, increasing your benefit amounts by 24% to 32%. To do this, you may need to tap into other retirement accounts, such as your IRA, to carry you until age 70. It's also important to work and establish an earnings record for at least 35 years. The formula for calculating your benefits is based on inflation-adjusted earnings in the highest 35 working years. If these later years are the highest earning years, it may be to your benefit to work a few years longer than planned, since each high-earning year will kick a low-earnings year out of the calculations.

2. Spousal strategies

Those who are married should develop a coordinated plan for when they start collecting. You can both delay until age 70, but if this is not an option, there are multiple strategies for married people. One effective strategy for couples with different earnings histories is to have the higher earner delay claiming as long as possible, to maximize that benefit. This strategy allows the ultimate surviving spouse to claim either their benefit or the spouse's benefit, whichever is larger, so it gives the lower earner the chance to end up with a benefit much bigger than they could have gotten on their own. There are other strategies for couples which require an analysis of the details.

Lastly, it is important to **work closely with your Wealth Adviser** who can help you tackle some of these complexities and help you make sound financial decisions.

Contact Lisa at (908) 646-0102 or lmcknight@pgbank.com for more information.

Can my loved one qualify for Medicaid?

Cynthia Aiken, MBA, CFP®

When a family realizes that an elderly loved one will likely spend their remaining years in a nursing home or care facility due to frailty, failing health, chronic conditions, Alzheimer's, or dementia, the potential cost of care can seem overwhelming. The estimated annual median cost of a nursing home private room is $102,852 nationally and $155,125 in the New York metro region. The two to three-year average stay in a nursing home is beyond the means of many individuals and families. For this reason, families often inquire about Medicaid as a resource to cover the cost of nursing care.

What is Medicaid?

Medicaid differs significantly from Medicare. Medicare is the national health insurance program for Americans age 65 and older and certain younger people with disabilities. Medicare does not cover long-term care or custodial care. On the other hand, Medicaid provides health coverage to eligible low-income people of all ages, pregnant women, elderly adults, and people with disabilities. Medicaid is administered by all 50 states per the federal requirements and is funded by both the states and the federal government. Because Medicaid programs are operated at the state level, some elements of each state program are different. Federal law requires that Medicaid be considered the "payer of last resort" if other insurance is in place. Adults 65 and over represent 9% of nationwide Medicaid enrollees with disabled people representing 14%; the remaining 77% are children and adults under 65.

What does Medicaid cover?

Medicaid provides comprehensive inpatient and outpatient health care coverage, including many services and costs Medicare does not cover. Focusing on the elderly, Medicaid covers long-term care, which is generally considered the custodial care provided when a person needs assistance for activities of daily living – eating, bathing, dressing, continence, toileting and transferring. There are special Medicaid-funded programs to cover long-term, in-home personal care and Medicaid-related programs can pay some of the costs of assisted living in some states.

What are the eligibility requirements?

Medicaid coverage for nursing home or home-based services is available only to people with very low income and assets; the exact levels are dependent upon the state where the individual lives. Each state's income and assets standards are set as a percentage of the federal poverty level and applied to the individual's Modified Adjusted Gross Income (MAGI). For example, in New Jersey, the 2021 income limit for a single individual, age 65 or older, is $2,382 per month and the asset limit is $2,000.

If one spouse needs long-term care and the other spouse does not, there are "community spouse allowance" rules that ensure that the community spouse (non-applicant spouse) has sufficient funds to live on. For the current year, this allowance for the community spouse is $3,259 in New Jersey. Likewise, the community spouse can retain the greater of $26,076 or 50% of the couple's joint assets up to a maximum of $130,380 (effective 1/2021 to 12/2021).

Like many other states, New Jersey follows the "Doctrine of Necessaries," which imposes liability on both spouses for debts incurred by one spouse if those debts were acquired for the purpose of providing necessaries for the family. A necessary is a good or service provided to one spouse that benefits both spouses. So, the resources of both spouses are available to pay the medical or housing debts of either spouse.

What is Medicaid "spend down?"

If monthly income is too high, the individual may still be able to qualify by subtracting certain items from their income by "spending down." Medicaid "spend down" is the process of subtracting certain medical bills and health insurance premiums from income until it is within the required limit. Eligibility is determined using six months of income and medical expenses. Because nursing home stays are very expensive, nursing home residents may qualify more easily because their income is spent down to cover the nursing home bills.

The concept of "spend down" is also applied to the reduction of assets to the eligibility limit. Assets can be reduced by paying down debt, making home modifications to facilitate aging at home and prepaying funeral expenses. The individual's home is exempt from asset limits if it is expected that he or she will return home within a reasonable time frame. If the community spouse remains in the family home, then the house and family car are exempt from the asset limits and "spend down."

Most states, including New Jersey, require a five-year Medicaid look-back period; which means that Medicaid will review five years of financial transactions prior to an individual's Medicaid application to ensure that no assets were sold, transferred, or gifted for less than fair market value. The applicant is ineligible if there are violations during the look-back period.

What is the application process?

Because each state's Medicaid program has its own eligibility rules, it is necessary to contact the state Medicaid office for specific information. In most states, applicants may be asked to provide birth certificate, proof of citizenship, documentation of all income, assets and liabilities, mortgage, rent, real estate taxes, medical records documenting disability, and all health insurance documentation and policy coverages.

Planning ahead

Qualifying for Medicaid is a difficult process and Medicaid planning is key for meeting the eligibility requirements. Some issues to consider for Medicaid planning:

- What is the individual or couple's financial situation – income, assets, insurance coverage, other resources?
- What are the current and projected health care needs?
- How does the individual or couple want to spend their later years?
- How does the individual or couple want their affairs to be managed?

Medicaid planning can include strategies to reduce or transfer income or assets to other family members through trusts or other vehicles. If considering such strategies, you should seek advice from professionals who specialize in Medicaid planning – Elder Care Resource Planners, Geriatric Care Managers, Veterans Benefits Planners, and Elder Law Attorneys.

Keep in mind that Medicaid long-term care is for America's low-income, elderly population. Your loved one may not qualify for financial support through Medicaid. However, planning for a prolonged nursing home stay may be an important element of your family's Financial Plan.

Please note that this article is intended as a general introduction to Medicaid and Peapack Private is not able to provide advice on Medicaid planning.

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Estate Planning in a Digital World

Ryan D. Kung, Financial Analyst

In today's highly technologically integrated world, most people have a more extensive digital life than they realize. In the realm of estate planning, the collection and management of assets we digitally own can be easy to overlook. Assets we acquire while navigating our digital lives can provide great value to future generations in ways not readily thought of today. Failing to integrate these assets properly into your estate plan can cause your heirs unnecessary costs and inconvenience. A well thought out "digital estate plan" will preserve the benefits of your digital assets and a part of your legacy as well.

What is a Digital Asset?

Many of us own digital assets that we don't even think about. With technology at the forefront of today's businesses, it has become the norm to store personal and financial records in smartphones, computers, or the cloud. We acquire social media accounts, online businesses, and even virtual currencies as we follow this online, "paperless" path. Only a few decades ago, many of these intangible assets were not in existence but today are widely used and may hold significant financial or sentimental value. It is essential to understand the different types of digital assets, to take inventory, and to manage properly what you own online. A typical list of digital assets includes:

- Email and social media accounts
- Digital photos and videos
- Domain names for websites
- Digital art or rights to literary, musical, cinematic, or theatrical works
- Bitcoin and other cryptocurrencies
- Online betting accounts
- Online video channels with monetized content and advertising revenue
- Online gaming profiles/avatars

With Great Digital Power, Comes Great Digital Responsibility

With an understanding of your full digital asset inventory comes the need to recognize the risks and access requirements for your future heirs. Most are aware of the importance of having good passwords and using data encryption to safeguard important information from hackers. Without these levels of protection, your personal details or financial records could be at the fingertips of someone with malicious intent. This notion of having digital security becomes even more evident in the ever-growing world of virtual currency. Today, roughly 30-40 million Americans own some form of cryptocurrency, and unlike gold or silver, such currency is stored in online ledgers that are susceptible to user error and hacking. The Mt. Gox bitcoin exchange bankruptcy of 2014 was caused when 850,000 bitcoins worth approximately $450 million were stolen without a trace. This is an extreme example, but it highlights what could happen to unsecured digital assets.

While many digital disasters are outside of the users' control, such as the Equifax data breach of 2017, individuals can still mitigate risks and reduce the chances of having their data compromised throughout their daily digital lives. Setting up elaborate passwords and having a secure place to store them is always important, but understanding the terms of service of the digital applications you use and the data privacy laws that govern them are also very significant from an estate planning standpoint. While these terms and laws are there to protect you while you are living, they may end up being a hinderance to your heirs. Federal data privacy laws generally bar online account service providers from allowing anyone other than the account owner to access electronic assets without explicit consent. A good "digital estate plan" will help minimize such barriers to access for your loved ones.

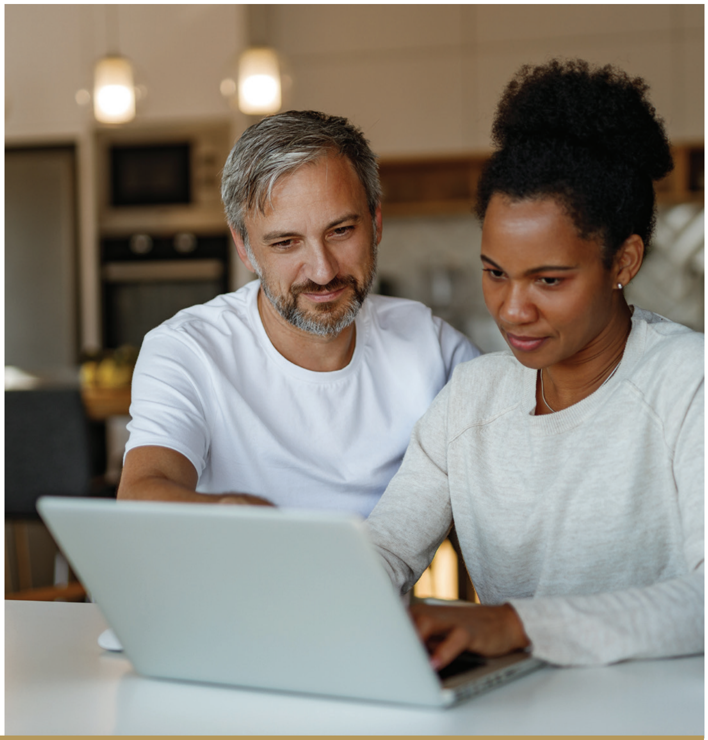
Develop a Plan

Digital estate planning is still a relatively new concept, with most U.S. states including New Jersey enacting specific laws governing digital assets only within recent years. The Fiduciary Access to Digital Assets Act of 2015 is a law developed by the Uniform Law Commission (ULC) that extends fiduciary powers to digital assets. However, if no fiduciary access is granted by a user, the terms of service or privacy policy of the site controlling the digital assets typically prevail. A "digital estate plan" makes it easier for your heirs to retrieve and secure your digital assets. Not only does it eliminate the need to track down passwords, it also gives your family members a legal path to access your digital assets and may even protect income streams that such assets generate. Therefore, creating a written plan for managing digital assets is crucial in providing legal standing for your loved ones. A basic "digital estate plan" will:

- **Start with an inventory:** It is important to specify what digital assets you have, where they are stored online, their estimated financial value, and any login credentials necessary to access them.
- **Choose who will manage your assets:** Clearly spell out who can or cannot access and manage your digital assets.
- **Determine how you want to manage your assets:** Simply outlining whether you want your digital assets to be deleted, sold, or kept for future generations can help eliminate the guesswork.
- **Be in writing:** Your "digital estate plan" is only as good as what you have written down on paper. It can be included as a provision in your will and shared with your fiduciaries.
- **Encompass documents outside of your will:** Include these provisions in your Power of Attorney and living trust (if you have one). This allows your digital assets to be managed for you should you become incapacitated.

Conclusion

In an ever-changing digital world, we must adopt methods that incorporate digital assets into estate plans. Having an online presence can mean years of accumulation of assets you may never physically see but most certainly own. This makes developing a "digital estate plan" a critical consideration for many. Digital estate planning does not have to be complicated. As with physical assets, the important steps are to catalogue what you own, choose who will manage them, and determine how you want them administered. Including digital assets in your estate plan clearly and in writing will eliminate complications for your loved ones while ensuring that this part of your estate will be managed as you desire and that your digital legacy will not be lost.



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