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THE TAX LAWYER

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### Harris Tax Hikes On Top Incomes Will Hit Harder In High Tax States



Trump has vowed more tax cuts if he is elected, while Vice President Harris plans to raise taxes on upper incomes. The Trump tax cuts that took effect in 2018 are scheduled to expire at the end of 2025. That means tax changes, even

if Congress does not take action. Trump wants the 2017 law [extended](#), while Vice President Harris wants rates back up.

Presidents can't make tax changes by themselves, they need House and Senate votes too. But with contested Congressional seats up for grabs this year, if either party has the House, Senate and President, tax changes could sail through. Both Vice President Harris and former President Trump tout tax changes they will make if elected. Harris proposed a 28% tax on [long-term capital gains](#) for Americans who earn \$1 million or more.

President Biden wanted high income taxpayers to pay the same tax rates on capital gains as they do on ordinary income, up to 39.6%. In that sense, [Harris' 28% capital gains tax plan was a surprise](#). It would be a significant hike from the present 20% rate. But Senator Bernie Sanders quickly expressed disapproval, urging Harris to aim for higher rates on upper income taxpayers.

## **High State Taxes**

Harris' tax plans could hurt top earners more in high tax states. All eyes are on the federal election, but it's hard to talk taxes without considering state taxes, particularly in high tax states. California has the highest rates, and its income taxes are administered by the Franchise Tax Board. For a decade, the top California income tax rate was 13.3%, but effective on January 1, 2024, the [new top rate](#) shot up to an eye-watering 14.4%. That is the highest ordinary income rate now, but surely like the feds and like most states, there's got to be a better deal for capital gains, right?

Not really. California *does* allow a modest tax break for capital gain, but it's so small that it seems [hard to call it a break](#). The 13.3% rate applies to capital gain at higher incomes, and that kind of unified rate structure has long been

an irritant to California investors. Currently, the top federal capital gain rate is 20%. On top of that, you must add the 3.8% net investment tax, bringing you already to 23.8%.

Even without a rate increase, by paying 23.8% plus the state rate of 13.3%, you can reach a grand total of 37.1% on long term capital gains. In fact, if you look at other states and even other countries, Californians are paying more on capital gains than virtually anyone else in the *world*. If Harris' 28% on capital gain is approved, keep in mind that you will *still* need to add the 3.8% net investment income tax, plus the 13.3% California tax, for a whopping 45.1% rate on long term capital gains for higher income Californians.

Higher tax rate pressure could mean that a few more Californians might consider moving away for tax reasons. I see it regularly, and many other tax lawyers probably do too. Sometimes it is a move before a big income event, such as a lawsuit settlement, stock or crypto sale, or sale of a company. But sometimes it is a more general and long-term malaise about California taxes. Given the already high rates prevailing in the Golden State, higher federal rates may be especially noticeable for higher-income Californians.

### **Tax Changes Loom**

Returning to the smorgasbord of tax proposals, ordinary income may go up too, as Harris wants to raise the 37% top rate back up to 39.6%. Harris has also proposed many *other* tax ideas, largely tracking those [proposed by Biden](#). For instance, she repeated his promise to avoid increasing tax for Americans making less than \$400,000, expressed support for an expanded child tax credit, and embraced his so-called Billionaire Minimum Income Tax, a 25% minimum income tax on households worth more than \$100 million.

A similar pattern can be found in her proposal to raise the corporate tax rate from 21% to 28%. For many years, the corporate tax rate was 35%, until it was slashed to 21% by former President Trump in 2017. Lately, Trump has said that he wants to cut the 21% corporate tax rate even more. Conversely, in her 2020 presidential campaign, Harris promised to reverse this cut *entirely*, bringing the rate back up to 35%. In 2024, her 28% plan backtracks on this promise.

A few of her other recent proposals may also seem a bit more pro-business. For example, Harris proposed an expanded tax deduction for new small businesses, providing a deduction of up to \$50,000 in eligible startup expenses, a marked increase from the \$5,000 deduction available today. She also promised to cut some of the bureaucratic red tape burdening small businesses, making it easier to operate and further incentivizing growth.

Some of Harris' more populist tax ideas deviate from Biden's agenda, and as noted, she even echoed former President Trump's proposal to end the federal income tax on tips. Among Harris' tax plans, most are predictably tax increases, some of them major. Stock buybacks are currently taxed at 1%, but she wants it quadrupled to a 4% excise tax. She also piggybacked on Biden's controversial plan to tax certain [unrealized capital gains](#) that critics say would operate as a wealth tax. You would have to pay this tax even if your gain is unrealized—that is, even if you don't sell the asset in question.

On the other side of the income spectrum, she has offered tax credits to eligible renters below a certain income level. She also has proposed refundable tax credits to individuals making below \$50,000 through her LIFT the Middle Class Act, as well as an expansion of the Earned Income Tax Credit, which benefits lower-income workers.

It's too early to have a clear idea of exactly what's in store for tax this upcoming year. But taxpayers should prepare for change.

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