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Ways and Means 'in receive mode' for tax reform technical corrections, Brady says

House Ways and Means Committee Chairman Kevin Brady, R-Texas, this week urged the business community to help taxwriters identify provisions in the major tax legislation enacted late last year (P.L. 115-97) that are ripe for technical corrections.

In remarks at a conference sponsored by the Tax Council Policy Institute (TCPI) February 15, Brady said that the Ways and Means Committee plans to "develop a punch list of provisions that need to be addressed either administratively or through changes in the code itself."

He did not indicate a timetable or a legislative vehicle for moving a technical corrections bill, however.

More corrections discussion at taxwriting hearings

How to address unintended consequences of the new law dominated the discussion at two congressional hearings this week – one held by Ways and Means on February 15 and one by the Senate Finance Committee a day earlier – that were nominally dedicated to the funding request for the Treasury Department in the fiscal year 2019 budget blueprint that the Trump administration sent to Congress on February 12. (See separate coverage on the budget in this issue.)

Treasury Secretary Steven Mnuchin was the sole witness at both hearings.

Carried interest: Finance Committee ranking member Ron Wyden, D-Ore., asked Mnuchin about recent articles in the tax press that discuss how some taxpayers are planning to use S corporations to avoid the three-year holding period required under the new law for gains on qualified carried interests to be taxed at preferential long-term capital gains rates.

Mnuchin said he believes the Treasury had authority to block this type of action even before the law was enacted and added that a regulatory fix would be released within weeks.

Passthroughs: Senate Finance Committee Democrat Claire McCaskill of Missouri and Ways and Means Republican Pat Meehan of Pennsylvania asked Mnuchin about guidance on the new passthrough regime which generally allows passthrough entities to take a 20 percent deduction on qualified business income. (McCaskill contended that the law as drafted could encourage taxpayers to game the rules by recharacterizing wage income as more lightly taxed business income.)

Mnuchin told McCaskill that "the tax department in Treasury…and the IRS is full-time focused on this" and said "we will be putting out guidance for regulation to make sure that people can't abuse the passthroughs."

Depreciable life of qualified improvement property: Ways and Means Committee Republican Jim Renacci of Ohio asked about an apparent drafting error in the new law that omitted "qualified improvement property" from the list of property that has a depreciable life of 15 years.

Mnuchin said he was aware of the error – which he called "unintended" – but also noted that he was uncertain as to whether it could be addressed through regulation or whether a statutory change would be required.

Section 199A and agricultural co-ops: Hatch and Brady singled out a provision in the law that inadvertently allows farmers who sell products to agricultural cooperatives to take a larger deduction under new section 199A than would be available if they sold the same products to private companies.

Brady stated in his remarks at the TCPI conference that this anomaly "needs to be corrected ASAP" but gave no indication of what a possible correction might look like.

Online sales taxes: Addressing an issue unrelated to last year's tax legislation, Ways and Means Committee Democrat Suzan DelBene of Washington asked Mnuchin for the administration's position on the collection of state sales taxes on purchases from remote online vendors.

Mnuchin replied that President Trump "feels strongly" that states should be allowed to require online retailers to collect and remit sales and use taxes when selling into the state.

"I have personally spoken to [Trump] about this," Mnuchin said.

The Supreme Court intends to hear oral arguments in a case involving this issue later this year. (For prior coverage, see *Tax News & Views*, Vol. 19, No. 3, Jan. 19, 2018.)
URL: http://newsletters.usdbriefs.com/2018/Tax/TNV/180119_4.html

Brady: Tax reform the end of the line for extenders

Ways and Means Chairman Brady also told the TCPI conference that the enactment of the 2017 tax legislation should bring to an end the ongoing cycle of enacting and renewing temporary tax "extenders" provisions.

"Our old tax code is over. And now, it makes zero sense to trudge on with old provisions that served a different purpose, in a different tax code, during a different time," he said.

Brady acknowledged that Congress just last week voted to renew dozens of expired 2016 extenders provisions through the end of 2017 and to provide longer-term extensions for certain "orphaned" commercial and residential energy investment tax credits as part of the two-year budget agreement that was signed into law on February 9. (For details on the budget agreement, see *Tax News & Views*, Vol. 19, No. 6, Feb. 9, 2018.) But he indicated that the budget bill provisions were intended to tie up loose ends from the old tax code and that lawmakers will be more reluctant to approve temporary provisions going forward.
URL: http://newsletters.usdbriefs.com/2018/Tax/TNV/180209_1.html

"2017 was pre-tax reform. 2018 is post-tax reform, so there'll be a much tougher test," he said.

Brady indicated that his panel will hold a hearing in the coming weeks to evaluate the remaining extenders with an eye toward determining which should be made permanent and which should be expunged from the tax code.

The 2017 tax reform legislation itself contains some 20 provisions – chiefly those benefiting individuals, passthroughs, and estates – that are scheduled to expire at the end of 2025. White House National Economic Council Director Gary Cohn, who also spoke at the TCPI conference, said the Trump administration wants these provisions to be made permanent – an effort that is likely "a next-year event."

A list of all the tax provisions that are scheduled to expire through 2027 – including those enacted in the 2017 tax legislation – is available from the Joint Committee on Taxation staff.
URL: https://www.jct.gov/publications.html?func=startdown&id=5057

Tax reform implementation and IRS funding

Also this week, Republicans and Democrats at a February 14 Senate Finance hearing on the IRS's budget request for fiscal year 2019 generally agreed that the agency needs additional funds to implement the new tax law.

Finance Committee Chairman Hatch noted in his opening statement that the IRS "will bear the brunt of the burden in implementing and administering the tax code and the new tax provisions" [and] "it needs sufficient personnel and resources to carry out its important mission at this critical juncture."

"The IRS is the only agency in the government that touches every single American every single year. And that's why I've pushed for such robust oversight over the years. It is also why the IRS should get the resources it needs to do its job right," he added.

IRS appropriations are currently being negotiated in Congress under the just-enacted two-year budget deal, which sets top-line defense and nondefense spending levels for the remainder of fiscal year 2018 and all of fiscal year 2019. As part of that process, the White House has officially requested an additional $397 million the IRS has said it would need for implementation of the new tax laws.

Acting IRS Commissioner David Kautter (who is also assistant Treasury Secretary for tax policy) told the panel that the Service would dedicate the bulk of the funds to enhancing technology and cybersecurity. Improvements in software would lead to more effective enforcement and free up resources elsewhere, he said.

Kautter stressed three legislative changes the committee could make to assist the IRS:

- Bringing back streamlined critical pay authority, which he said would reduce the time it takes to bring on new employees and increase the salaries they can be paid, making it easier to attract top talent for cybersecurity and enforcement initiatives;
- Expanding the IRS's authority to correct simple errors on tax returns (a proposal that was included in the administration's fiscal year 2019 budget blueprint), which he said would streamline the return process; and
- Establishing minimum qualification requirements for certified tax preparers, which he said would reduce the number of errors in returns and improve efficiency.

Finance Committee ranking Democrat Ron Wyden appeared skeptical that congressional appropriators would allot the entire requested increase to the Service, but argued that while the IRS may not be a favorite agency among lawmakers, people expect it to function properly.

— Alex Brosseau and Jacob Puhl
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Trump signals support for gas tax hike, reports say

President Trump endorsed a 25 cents-per-gallon hike in the federal gasoline tax to pay for new infrastructure spending during a February 14 meeting at the White House with administration officials and Democratic and Republican members of Congress, according to reports published in *Axios* and *Politico*. Trump also reportedly said that he is open to other offsets for infrastructure spending as well.

An unnamed White House official cited in the *Axios* and *Politico* reports commented that "[t]he gas tax has its pros and cons, and that's why the president is leading a thoughtful discussion on the right way to solve our nation's infrastructure problems."

The news came two days after the Trump administration released a legislative outline of a proposed infrastructure overhaul plan that calls for an investment of $200 billion in federal funds that the White House expects will generate some "$1.5 trillion in infrastructure investments through partner financing at the state, local, tribal, and private level." The outline does not include specific offsets for the proposed $200 billion in new infrastructure spending.
URL: https://www.whitehouse.gov/wp-content/uploads/2018/02/INFRASTRUCTURE-211.pdf

An increase in the federal gas tax, which hasn't been raised since 1993 and is not indexed to inflation, remains a favorite infrastructure financing option for many Democrats and some in the business community. The idea generally has been unpopular among congressional Republicans; however, Senate Finance Committee member Charles Grassley, R-Iowa, recently acknowledged that it needed to be "on the table" as part of the negotiations over infrastructure reform even though he would not "be out there pushing for" it. House Transportation and Infrastructure Committee Chairman Bill Shuster, R-Pa., likewise raised the issue – what he called "the elephant in the room" – with colleagues at the congressional GOP retreat last month. (For prior coverage, see *Tax News & Views*, Vol. 19, No. 5, Feb. 2, 2018.)
URL: http://newsletters.usdbriefs.com/2018/Tax/TNV/180202_1.html

Infrastructure draft includes private activity bond expansion

Included in the administration's infrastructure package is a handful of proposals to expand tax-preferred private activity bonds. These provisions, which would account for roughly $6 billion of the $200 billion federal investment, call for:

- Expanding the types of projects that are eligible for private activity bond financing;
- Eliminating the alternative minimum tax preference on private activity bonds;
- Removing state volume caps and transportation volume caps on private activity bonds for public purpose infrastructure projects and expanding eligibility to ports and airports;
- Providing change-of-use provisions to preserve the tax-exempt status of governmental bonds when a public project is purchased by a private service provider; and
- Providing change-of-use cures for private leasing of projects to ensure preservation of the tax exemption for infrastructure projects.

The proposal also would require infrastructure projects financed with private activity bonds to have public attributes – that is, the projects must be:

- Owned by a state or local government or owned privately under arrangements in which rates charged for services or use of the projects are subject to state or local governmental regulatory contractual control or approval and
- Available for use by the general public.

The House of Representatives proposed to repeal private activity bonds in the tax reform legislation (H.R. 1) it approved last November; but that provision was not included in the Senate version of H.R. 1 or in the bicameral conference agreement that President Trump signed into law on December 22, 2017 (P.L. 115-97). The enacted law does, however, repeal advance refunding bonds as well as tax credit bonds.

Don't expand, 'refocus,' Brady says: In comments to reporters on February 13, House Ways and Means Committee Chairman Kevin Brady, R-Texas, said that instead of expanding the private activity bond program he would prefer to refocus the existing portfolio to emphasize infrastructure investments.

"What I hope we would do is look at the existing private activity bond portfolio, where my last estimate showed about 12 percent of that funding or thereabout was actually used for infrastructure" and "refocus more of that to those infrastructure and regional projects that those bonds were originally designed to do," he said.

— Michael DeHoff
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Few significant tax proposals in Trump administration's FY 2019 budget blueprint

The budget blueprint for fiscal year 2019 that the Trump administration submitted to Congress on February 12 includes assorted discrete tax proposals; but aside from a now familiar GOP call to repeal the Patient Protection and Affordable Care Act (PPACA) that is unlikely to gain traction on Capitol Hill, it proposes no sweeping changes to federal tax laws.
URL: https://www.whitehouse.gov/wp-content/uploads/2018/02/spec-fy2019.pdf

The dearth of new tax proposals was not unexpected. Indeed, the Treasury Department announced February 9 that for the second year in a row it would not publish the traditional "Green Book" with detailed explanations of the tax proposals typically included in a presidential budget.

Treasury spokespeople attributed the budget's relatively modest tax title to the enactment late last year of major tax legislation (P.L. 115-97) that lowers tax rates on corporations, passthrough entities, individuals, and estates and moves the United States toward a participation exemption-style system for taxing foreign-source income of domestic multinationals. (The tax benefits for individuals, passthroughs, and estates generally expire at the end of 2025, but while the budget release expresses the administration's support for extending these provisions it does not include formal proposals to make them permanent.)

But the administration has proposed several largely familiar tax provisions addressing tax preparer oversight, taxpayer compliance, and health care.

Preparer oversight and taxpayer compliance

The budget package includes proposals that would:

- Explicitly provide that the Secretary of the Treasury has authority to regulate all paid tax return preparers;
- Expand the IRS's authority to address correctable errors on tax returns to include instances in which a taxpayer has (1) provided information that does not match the information in government databases, (2) exceeded the lifetime limit for claiming a particular deduction or credit, or (3) failed to include with his or her return certain documentation that is required by statute;
- Modify worker classification and information reporting requirements by (1) creating a safe harbor allowing a business to declare certain service providers as independent contractors while still withholding income taxes on payments to those independent contractors, (2) raising the reporting threshold for payments to all independent contractors from $600 to $1,000, and (3) reducing the reporting threshold for third-party settlement organizations from $20,000 and 200 transactions per payee to $1,000 without regard to the number of transactions; and
- Require a Social Security number that is valid for work for taxpayers to claim the child tax credit and the earned income tax credit. For both credits, the requirement would apply to taxpayers, spouses, and all

qualifying children. (This requirement already applies for the earned income tax credit, but the proposal would "fix an administrative gap to strengthen enforcement of the provision.")

Health care

The budget blueprint calls for repealing the Patient Protection and Affordable Care Act and replacing it with legislation similar to the Graham-Cassidy-Heller proposal offered in the Senate last year. That bill, in broad terms, would dismantle the overall structure of the PPACA (including the expansion of the Medicaid program, tax credits to help lower-income individuals afford the cost of health insurance coverage, and cost-sharing reduction subsidies) and replace it with block grants for states to use to administer their own respective health insurance plans. (Senate Majority Leader Mitch McConnell, R-Ky., had to cancel a planned floor vote on the Graham-Cassidy-Heller bill last fall after it became clear that it lacked enough support to win approval. For prior coverage, see *Tax News & Views*, Vol. 18, No. 34, Sep. 29, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170929_3.html

Last year's tax reform legislation essentially repealed the PPACA's individual mandate (requiring individuals to provide proof of insurance coverage) by reducing the penalty for noncompliance to zero; but it left in place other PPACA taxes such as 3.8 percent net investment income tax and the 0.9 percent Medicare Hospital Insurance tax on certain upper-income individuals, and levies such as the medical device excise tax, the "Cadillac" tax on certain high-cost employer-provided health plans, and the annual fee on health insurance providers.

Congressional Republicans were unable to get a PPACA repeal-and-replacement bill through both chambers last year and have shown little appetite for renewing that effort in 2018. They are not expected to invoke the budget reconciliation process this year – a decision that essentially would mean ceding the opportunity to make another run at repealing the PPACA since they would be unable to win over enough Democrats to secure the 60 votes they would need to get such a bill through the Senate under regular order. Republicans could, however, try to move legislation repealing certain PPACA revenue provisions such as the medical device excise tax and the Cadillac tax on a piecemeal basis. (Both provisions were temporarily suspended in the short-term government funding bill enacted on January 22 and their repeal has in the past won support among some Democratic lawmakers as well as among Republicans.)

Other health care-related proposals in the budget blueprint would:

- Allow Medicare beneficiaries with high-deductible health insurance plans to make tax-deductible contributions to tax-preferred health savings accounts or medical savings accounts; and
- Allow individuals who receive funds for qualified tuition and related expenses under the Indian Health Service Professions Scholarship Program to exclude those amounts from income in return for an obligatory service requirement and allow a similar exclusion for loan amounts forgiven under the Indian Health Service Loan Repayment Program.

Other tax provisions

The administration's budget package also includes proposals to:

- Turn over management of the nation's air traffic control system to a yet-to-be-created nongovernmental agency and pay for air traffic control operations through user fees rather than airline ticket taxes;
- Reduce the Harbor Maintenance Tax to better align estimated annual receipts with estimated appropriations levels for eligible expenditures from the Harbor Maintenance Trust Fund; and
- Reinstate the Oil Spill Liability Trust Fund excise tax, which expired on December 31, 2017, but was renewed for one year (through December 31, 2018) under the recently enacted Bipartisan Budget Act of 2018.

IRS appropriations

The budget blueprint calls for $11.1 billion in base funding for the IRS – an amount that includes $2.3 billion for tax filing and compliance technology applications and $110 million for technology modernization.

The budget also proposes an additional $362 million for fiscal 2019 to "fund new and continuing investments in expanding and improving the effectiveness and efficiency of the IRS's tax enforcement program." According to the administration, IRS enforcement activities are expected to generate $44 billion in additional revenue over 10 years at a cost of approximately $15 billion for a net savings of $29 billion. Once new staff are trained and the enforcement initiatives are fully operational, the government can expect these programs "to generate roughly $4 in additional revenue for every $1 in IRS expenses." The administration adds that this estimate "is likely understated because it only includes amounts received" and "does not reflect the effect enhanced enforcement has on deterring noncompliance."

IRS appropriations are currently being negotiated in Congress as part of the two-year budget deal signed into law last week that sets top-line defense and nondefense spending levels for the remainder of fiscal year 2018 and all of fiscal year 2019. (For prior coverage, see *Tax News & Views*, Vol. 19, No. 6, Feb. 9, 2018.)
URL: http://newsletters.usdbriefs.com/2018/Tax/TNV/180209_1.html

As part of that process, the White House has officially requested an additional $397 million the IRS has said it would need to implement last year's new tax law. (See separate coverage in this issue for additional details.)

— Michael DeHoff
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A note on our publication schedule

The House and Senate will be out of session from February 17 through February 25 for the Presidents' Day recess. Barring any unexpected developments on the tax policy front, the next edition of *Tax News & Views* will be published the week of February 26.

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