Taxwriting leaders mull path forward on extenders

Addressing one of the most time-sensitive issues for the tax community, House Ways and Means Committee Chairman Richard Neal, D-Mass., and Senate Finance Committee Chairman Chuck Grassley, R-Iowa, this week said that they and their taxwriting colleagues are discussing options for extending a group of tax incentives that expired at the end of 2017, as well as a small number that lapsed at the end of 2018 or will expire this year.

Popularly known as the “tax extenders,” the provisions include both individual and business tax credits and deductions. (A complete list of expired and expiring provisions from 2017-2019 is available from Deloitte Tax LLP.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190201_1_suppA.pdf

Neal noted that the February 15 deadline for a bipartisan conference committee to report out legislation to fund the federal government through the end of the current fiscal year and reach an agreement on border security issues, along with the March 1 return of the federal debt limit (which was temporarily suspended under a budget agreement enacted last year), provide potential legislative vehicles for moving an extenders package in the near term.
"We’re trying to figure out how to do a lot of different things, including the negotiations over the border and you’ve got the issue of what to do about the debt ceiling – you’ve got all these questions out there. So we’re working on them.” Neal told reporters January 30.

Grassley likewise told reporters on January 31 that “there’s a real effort to reach an agreement on extenders” and noted that he would like to see an extenders package attached to the upcoming government funding legislation.

Grassley also indicated that he is inclined to renew all of the expired provisions, remarking that “I don’t know how you handle one without the others.”

But the Finance Committee chairman also cautioned that at this point a February 15 extenders bill is not a certainty.

"[A]ll I can say is, from the people doing the negotiation, who are my people, ...there is a real interest in getting something done; but that doesn’t mean it’s going to get done,” he said.

Most of the provisions on the extenders list have been through numerous expirations and extensions since they were first enacted into law, and in more recent years the extensions have tended to be retroactive and for shorter periods of time. (An extenders package that was signed into law in February of 2018, for example, retroactively renewed a number of provisions that expired at the end of 2016 for just one year – that is, through the end of 2017 – meaning they were already in an expired status again when the bill was signed. For prior coverage, see Tax News & Views, Vol. 19, No. 6, Feb. 9, 2018.)


With the 2018 tax filing season under way as of January 28, congressional tax staff members have acknowledged that retroactive extensions complicate matters for both the IRS and taxpayers trying to complete their returns, particularly on the individual side, where taxpayers are less likely to file amended returns in the case of a retroactive change in the law.

**Fast action on technical corrections unlikely, Ways and Means aide says**

Also this week, the Democratic chief tax counsel at the House Ways and Means Committee, Andrew Grossman, threw cold water on the idea that the panel’s new majority is likely to act quickly on technical corrections to the 2017 tax cut law known informally as the Tax Cuts and Jobs Act (TCJA).

The Joint Committee on Taxation staff’s “Blue Book” for the TCJA, which was released late last year, identifies over 70 provisions that may require a technical correction to achieve the legislative intent of Congress. Outgoing Ways and Means Chairman Kevin Brady, R-Texas, introduced a discussion draft with dozens of proposed changes to the TCJA on January 2, the day before the new Congress began under Democratic control. However, Grossman told attendees of the DC Bar Association’s Tax Legislative and Regulatory Update Conference on January 29 that there will have to be extensive discussions among the members before there is any action by the committee.

URL: https://www.jct.gov/publications.html?func=startdown&id=5152
URL: https://waysandmeansforms.house.gov/uploadedfiles/tax_technical_and_clerical_corrections_act_discussion_draft.pdf

“To the extent that any of those ‘viral’ technical corrections have a possibility of being enacted into law this or in subsequent years, I would say they also will be subject to heavy negotiations,” Grossman said, referring broadly to the proposed changes most commonly discussed by tax practitioners and businesses. Among the more frequently mentioned changes are proposals to provide that qualified improvement property is depreciable over 15 years, clarify the effective date of new rules that generally disallow net operating loss carrybacks, and clarify that shareholders of regulated investment companies are eligible for the 20 percent deduction on their dividends from qualified real estate investment trusts and qualified publicly traded partnerships.

To date, Republicans and Democrats have agreed on only one TCJA technical correction: a fix signed into law last March for the so-called “grain glitch” – an unintended consequence of the 2017 law that further expanded incentives for farmers to sell their products to agricultural cooperatives rather than other buyers – for which Democrats secured an expansion of the low-income housing tax credit in exchange. (For prior coverage, see Tax News & Views, Vol. 19, No. 11, Mar. 23, 2018.)

Noting that drafting technical corrections requires understanding of the original congressional intent behind the provisions being changed, Grossman reiterated a message that Democratic taxwriters and senior staff conveyed throughout last year: it will be “a heavy lift to ask of a group of people that were not in the room drafting the bill or ever consulted on the bill.”

Grossman’s comments echo those of Ways and Means Chairman Neal, who has stated that before he takes up corrections legislation he wants the committee to hold hearings on the TCJA, its impacts to date, and the ways in which its rushed passage in the last two months of 2017 necessitated so many fixes.

**Estate tax: Thune wants to kill it; Sanders wants to supercharge it**

In other Capitol Hill developments, Senate taxwriter and Majority Whip John Thune, R-S.D., on January 28 introduced the Death Tax Repeal Act of 2019, which would repeal the estate tax. Thune has sponsored similar legislation in previous Congresses, and the latest iteration boasts Finance Committee Chairman Grassley and Senate Majority Leader Mitch McConnell of Kentucky as co-sponsors, along with two dozen other Republicans.

In his statement introducing his bill, Thune argued that “family-owned farms and ranches bear the brunt of this tax.”

Republicans had hoped to eliminate the 40 percent estate tax in their 2017 tax overhaul; but because of budget constraints they instead settled for doubling the exemption amounts (adjusted annually for inflation) through 2025. Exemption amounts in effect for 2019 are $11.4 million for individuals and $22.8 million for couples.

The repeal legislation is unlikely to become law during this congressional session, since Senate Republicans would have to win over 7 Democrats to overcome a 60-vote filibuster – a fairly high procedural hurdle that the GOP would have difficulty clearing; moreover, House Democrats, who control the Ways and Means Committee agenda, are very likely to oppose to the change.

Across the aisle, Sen. Bernie Sanders, I-Vt., unveiled legislation on January 31 that would target high-value estates by clawing back current-law estate tax exemption amounts and applying a graduated rate schedule as estate values increase. Sanders’ plan as introduced calls for a 45 percent tax on estates between $3.5 million and $10 million; 50 percent on estates between $10 million and $50 million; 55 percent on estates between $50 million and $1 billion; and 77 percent on estates above $1 billion. (Sanders notes in a news release that the 77 percent rate is the top rate that was in effect from 1941 through 1976.)

The Sanders plan also includes proposals to, among other things, tighten rules around the generation-skipping transfer tax, grantor retained annuity trusts, and grantor trusts, and limit the annual gift tax exclusion for gifts made to trusts.

The legislation is regarded primarily as a messaging vehicle for Sanders, a former presidential candidate who is said to be contemplating another White House bid in 2020. It is not expected to be taken up in the Senate Finance Committee.

**Kudlow: White House still open to executive action on capital gain indexing**

At the other end of Pennsylvania Avenue, White House National Economic Council Director Larry Kudlow told the Daily Signal January 28 that President Trump is still considering the idea of taking executive action to index capital gains to inflation.

The policy change is one that some conservative economists – including Kudlow – have long advocated, arguing that without indexing, investors who sell assets that have gained nominal value over time are being taxed in part on gains that are due solely to inflation and are overtaxed as a result.

Legislation to index capital gains to inflation did not make it into 2017’s Republican tax overhaul – or into the Tax Cuts 2.0 package that House Republicans advanced last fall – but the idea has been periodically revived throughout the Trump presidency.

There is no clear legal answer as to whether indexing is something that could be dictated by executive action rather than through legislation, although some legal experts and administration officials believe the case can be made. Treasury Secretary Steven Mnuchin last summer was said to be studying whether the Treasury Department has legal
authority to act on its own on this issue, but he has not publicly stated whether he has made a final determination. (For prior coverage, see Tax News & Views, Vol. 19, No. 25, Aug. 3, 2018.) Regulatory action in this area likely would be subject to a legal challenge.


The latest push for regulatory action was prompted by a letter that 41 anti-tax and conservative organizations sent to President Trump on January 22, urging him to “swiftly” use his executive authority to eliminate what they dubbed the “inflation tax.”

URL: https://www.atr.org/sites/default/files/assets/1-22-19%20Coalition%20Letter%20Urging%20Trump%20to%20End%20the%20Inflation%20Tax.pdf

“We believe taking inflation out of the tax on savings will be welcomed by investors and will boost the stock market given that a cut in the tax rate on investment was not a part of tax reform,” the letter said. “Taking bold executive action now – without having to go to Congress – will restore confidence in financial markets and help bolster every 401(k), IRA, and 529 plan in America.”

— Storme Sixeas
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CBO report warns of high and rising budget deficits

The nonpartisan Congressional Budget Office (CBO) on January 28 released its annual assessment of the federal budget and economy for the next decade. Although the report shows a decline in cumulative budget deficits relative to the agency’s last analysis – due mainly to a quirk in the way emergency spending is accounted for – it nonetheless paints a bleak and deteriorating fiscal picture over the long run.

Deficits, public debt on the rise

The latest CBO report (The Budget and Economic Outlook: 2019 to 2029) predicts deficits will hover between 4.2 and 4.8 percent of the economy between 2019 and 2029 – a slight improvement over last year’s report, which showed deficits reaching as high as 5.4 percent of gross domestic product (GDP), but much higher than the average 2.9 percent of GDP deficit registered over the last 50 years. In dollar terms, federal spending will outstrip revenues by more than $1 trillion in fiscal 2022 – a level last seen in 2012 in the wake of the financial crisis – and after that point deficits are never again projected to fall below the $1 trillion mark. Over the next decade, CBO predicts cumulative deficits will total $11.6 trillion, about $1.2 trillion lower than the overlapping 10 years (2019-2028) included in last year's report.

URL: https://www.cbo.gov/publication/54918

With respect to the apparent improvement in cumulative deficits over last year’s report, however, it is important to note that the bulk of it – roughly $700 billion – is attributable to the manner in which the CBO is required to account for so-called “emergency” spending. Specifically, the agency must take emergency amounts enacted in the most recent fiscal year and inflation-adjust them over the remainder of the budget window. In the 2018 report, the enacted amount of emergency spending, which served as the inflation-adjusted base, was $108 billion. In the current report, the relevant amount is only $2 billion (though that number may soon rise as lawmakers mull providing additional emergency funding related to recent hurricanes and wildfires).

Most of the remaining fall in cumulative deficits – about $336 billion – can be attributed to updates in CBO’s economic forecast including, most substantially, lower debt service costs due to a write-down in projected interest rates.

Revenues and spending: Over the course of the next decade, CBO projects revenues will average 17.5 percent of gross domestic product (GDP) – a level in line with the 17.4 percent of GDP average over the past 50 years, but a notable decline from the 18.2 percent 10-year average projected in the report preceding enactment of the 2017 tax cut law (P.L. 115-97, also known informally as the Tax Cuts and Jobs Act or TCJA).

Meanwhile, federal spending is expected to grow steadily over the budget window, averaging 22 percent of GDP, a slight improvement over the previous report’s projected average of 22.4 percent of GDP (again, due in large part to
the reduction in projected emergency spending) – but well above the 20.3 percent of GDP average experienced over
the past 50 years. As it has in most of its recent reports, CBO continues to attribute most of the projected increases in
spending to demographics (an aging population translates into more Social Security and Medicare beneficiaries), rising
health care costs, and growing debt service costs due to rising interest rates and an accumulating federal debt.

Publicly held debt: On the debt front, by the end of the 10-year budget window (fiscal 2029), CBO projects the
federal debt held by the public – that is, debt not held in intragovernmental accounts such as the Social Security and
Medicare trust funds – will total almost 93 percent of the economy, a level not reached since 1947 in the wake of US
involvement in World War II.

More likely fiscal forecast could be even worse

Pursuant to the Congressional Budget and Impoundment Control Act of 1974 – the law that established the CBO and
laid the groundwork for the current congressional budget process – the agency is generally required to make its
projections on the basis of "current law," or laws as they are currently in effect. (One exception is excise taxes
dedicated to trust funds, for example, highway taxes, which are assumed to be continued beyond any scheduled
expiration). Inherent in CBO’s projections, therefore, is an assumption that all expired and expiring tax provisions will
not be renewed, and revenues will be higher as a result. The roster of expiring tax provisions includes, most notably,
nearly all of the tax relief for individuals, estates, and passthrough entities that were enacted in the TCJA and are
scheduled to lapse after 2025.

By contrast, a "current policy" revenue baseline would assume that those lapsing tax provisions will instead remain in
effect.

According to an analysis of "policy alternatives" included in its report, CBO notes that the 10-year revenue baseline
would be reduced by $957 billion if the expiring individual changes in the TCJA were made permanent. Extending 100
percent bonus depreciation beyond 2022 (after which time it is presently scheduled to phase out) would reduce
revenues by an additional $174 billion. Repealing certain Affordable Care Act taxes that Congress has acted to
postpone in the past (specifically, the health insurer fee, the medical device excise tax, and the so-called "Cadillac" tax
on high-cost employer-provided health plans) would reduce revenues by an additional $392 billion and making
permanent the expired tax extenders last renewed for tax year 2017 as part of the Bipartisan Budget Act of 2018 (as
well as some other temporary provisions that have yet to expire) would slash receipts by another $103 billion,
according to CBO. (All figures exclude debt service costs, which would also be substantial, totaling almost $150 billion
for these tax policies).

Even more impactful from a budget perspective is a policy alternative related to discretionary spending. Specifically,
CBO notes that if annual appropriations (that is, non-entitlement spending) are inflation-adjusted after fiscal year
2019 rather than allowed to fall to the levels specified under the statutory "sequester" caps in fiscal 2020 (and
adjusted for inflation from that point), deficits would be almost $1.8 trillion higher over the next decade (again,
excluding additional debt service costs). Democrats and Republicans have come together on three separate occasions
since 2013 to raise the statutory caps – most recently through the Bipartisan Budget Act of 2018 which boosted the
caps by a total of roughly $300 billion over fiscal years 2018 and 2019 – and lawmakers are expected to soon return
to this issue since, without action, defense and nondefense spending would fall substantially when fiscal year 2020
begins on October 1.

The combination of these policy adjustments would push cumulative deficits higher than $15 trillion over the next
decade, as compared to the roughly $11.6 trillion under "current law" assumptions.

Growth effects of TCJA to taper off, CBO says

As it has noted in past reports, CBO generally sees the economic boost from the Tax Cuts and Job's Act tapering off
over time. In broad terms, the agency predicts that real GDP growth will fall from 3.1 percent in 2018 to 2.3 percent in
2019 and then average roughly 1.7 percent over the remainder of the 10-year budget window – levels that it says are
generally in line with the private-sector Blue Chip Economic Indicators.

Much of the decline in projected economic growth from 2018 to 2019 can be attributed to an anticipated slowdown in
business fixed investment, the growth of which CBO estimates will fall from 6.8 percent last year to 3.2 percent in
2019 and an average of 1.7 percent thereafter.
The negative effect on federal purchases and contracts associated with the scheduled return of the sequester caps on defense and nondefense spending is also a major factor.

“That projected slowdown [in economic growth] largely results from an anticipated slowdown in the growth of business fixed investment, as the positive effects of recent tax legislation on investment growth begin to wane, and from a sharp reduction in federal purchases starting in the fourth quarter of 2019 that would occur under current law,” the report states.

Future legislative action to avoid the full brunt of the sequester – or extend expiring tax cuts – could help to ameliorate some of the projected decline in economic growth.

However, any such action – if not paid for through other budget measures – must be balanced against CBO’s common warning that taking on additional federal debt can lead to a “crowding out” of investment, and thus economic growth, over time as more and more dollars are directed to financing the government’s deficits rather than invested in private capital.

“Because federal borrowing reduces national saving over time, the nation’s capital stock ultimately would be smaller, and productivity and total wages would be lower than would be the case if the debt was smaller,” CBO says.

Even under its “current law” projections – which assume trillions of dollars in lower deficits due to expiring tax cuts and lower spending due to the sequester – CBO warns that projected debt levels run the risk of instigating a fiscal crisis.

“[T]he risk would rise of investors’ being unwilling to finance the government’s borrowing unless they were compensated with very high interest rates,” the report notes.

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White House FY 2020 budget proposal delayed

The White House Office of Management and Budget (OMB) confirmed this week that the Trump administration will not meet its statutory deadline of February 4 for submitting its fiscal year 2020 tax and spending blueprint to Congress.

In comments to reporters on January 29, a senior OMB official (who was not named in press reports) attributed the delay to the recent 35-day partial government shutdown. The OMB, which serves as a clearinghouse among the various executive branch departments and coordinates and drafts the administration’s budget, was among the agencies that were limited to carrying out essential functions only during the shutdown, which ended on January 25.

Exactly when the administration will submit its budget package to Congress is currently unclear. The OMB official told reporters that the agency is “working on a revised schedule and will provide additional information when it’s available.”

Under the Budget and Accounting Act of 1921, every administration is required to submit its budget request for the upcoming fiscal year no later than the first Monday in February. In practice, however, many presidential budgets in recent years have been delayed for various reasons: President Trump’s fiscal 2019 budget, for example, was about one week late due in part to a three-day government shutdown during January 2018; and President Obama’s fiscal 2015 budget was submitted four weeks after its statutory deadline – a delay the Obama administration attributed to a protracted congressional appropriations process for the preceding fiscal year.

The administration has been tight-lipped about potential tax proposals in the upcoming budget package. National Economic Council Director Larry Kudlow told Fox Business Network January 29 that the administration was preparing a “very tough spending budget with reductions of at least 5 percent across the board on nondefense accounts,” but he did not discuss the revenue side of the ledger. President Trump might offer more details in his State of the Union message on February 5. (The address was originally scheduled for January 29; but Trump agreed to a request by
House Speaker Nancy Pelosi, D-Calif., to delay the speech, which is traditionally delivered in the House chamber, until after the shutdown ended and the government reopened.

**House budget chief eyes tax hikes in FY 2020 budget resolution**

On Capitol Hill, meanwhile, House Budget Committee Chairman John Yarmuth, D-Ky., said in an interview with Reuters January 29 that his panel plans to draft a fiscal 2020 budget resolution that could include a call for tax increases on corporations and wealthy individuals as part of an effort to reduce federal deficits by 50 percent over the next 10 years.

Although he did not go into detail, Yarmuth indicated that the eventual resolution could call for raising the corporate tax rate to 26 or 27 percent from its current level of 21 percent enacted in the 2017 tax cut law known informally as the Tax Cuts and Jobs Act (TCJA). On the individual side, he also floated the possibility of adding new rate brackets at the upper end of the income scale. (The TCJA made significant changes to income tax rates and brackets for individual taxpayers.)

“There’s no reason we have the maximum rate ended at $400,000,” he said.

It’s important to remember that any budget resolution that eventually clears the House will serve primarily as a messaging document that outlines the majority’s tax and spending priorities. Actual tax legislative proposals will be developed in the Ways and Means Committee. For his part, Ways and Means Committee Chairman Richard Neal, D-Mass., said at the panel’s recent organizational meeting for the 116th Congress that one of his priorities is to “closely examine the Republicans’ tax law and its various problems”; but he has not thus far proposed specific changes to the TCJA. Those proposals likely will emerge as Ways and Means holds a series of hearings on the new law in the coming weeks and months. (No hearings on the TCJA are currently on the committee’s calendar and the panel’s first hearing in the new Congress, held on January 29, focused on nontax issues related to pre-existing conditions and their impact on health insurance coverage.)

It’s also worth bearing in mind that any broad-scale tax increases on corporations or individuals that the Democratic majority may move through the House are unlikely to be embraced in the Republican-controlled Senate and make their way to the president’s desk. Senate Budget Committee Chairman Mike Enzi, R-Wyo., has not yet indicated when – or if – his panel intends to take up an FY 2020 budget resolution of its own reflecting the GOP majority’s policy priorities.

— Michael DeHoff
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**Finance leaders announce subcommittee rosters for 116th Congress**

Senate Finance Committee Chairman Chuck Grassley, R-Iowa, and ranking member Ron Wyden, D-Ore., announced subcommittee assignments for the 116th Congress in a January 31 news release.

Subcommittee leaders include:

- **Taxation and IRS Oversight**: John Thune, R-S.D., chairman; Mark R. Warner, D-Va., ranking member;
- **International Trade, Customs, and Global Competitiveness**: John Cornyn, R-Texas, chairman; Robert P. Casey, Jr., D-Pa., ranking member;
- **Social Security, Pensions, and Family Policy**: Rob Portman, R-Ohio, chairman; Sherrod Brown, D-Ohio, ranking member;
- **Health Care**: Patrick J. Toomey, R-Pa., chairman; Debbie Stabenow, D-Mich., ranking member;
- **Energy, Natural Resources, and Infrastructure**: Tim Scott, R-S.C., chairman; Michael F. Bennet, D-Colo., ranking member; and
- **Fiscal Responsibility and Economic Growth**: Bill Cassidy, R-La., chairman; Maggie Hassan, D-N.H., ranking member.
The complete Finance subcommittee rosters are available from Deloitte Tax LLP.


Assignments are expected to be finalized at an upcoming Finance Committee executive business meeting.

— Michael DeHoff
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