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House taxwriters to explore economic impact of 2017 tax cuts

House Ways and Means Committee Chairman Richard Neal, D-Mass., announced this week that the panel will hold a hearing at 10:00 a.m. on March 27 to consider “the 2017 tax law and who it left behind.”


The hearing announcement did not elaborate on the specific topics the committee will address and a witness list was not available at press time.

Congressional Democrats and Republicans have been divided over the law known informally as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97) since its enactment. Democrats generally have contended that the bulk of the economic benefits stemming from the TCJA, which moved through Congress on the strength of GOP votes alone, have redounded primarily to those on the upper end of the income scale. Republicans, for their part, have argued that the TCJA is fueling economic growth, boosting wages, lowering unemployment, and reducing the outflow of US jobs overseas.

The Tax Cuts and Jobs Act has been a frequent target of House Democrats since they took control of the chamber – and the Ways and Means Committee – in the 116th Congress. So far this year, partisan debate over the perceived
merits and deficiencies of the TCJA has fueled much of the discussion at Ways and Means hearings on issues such as the economic outlook for middle-class families, temporary policy in the Internal Revenue Code, and the Trump administration’s fiscal year 2020 budget proposal.

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190315_2.html
URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190315_1.html

Ways and Means Chairman Neal also has vowed that he will not take up technical corrections to the TCJA until the panel holds hearings on the law, its impacts to date, and the ways in which its rushed passage in the last two months of 2017 necessitated so many fixes.

**JCT federal tax system overview includes TCJA data**

The Ways and Means hearing will come on the heels of the Joint Committee on Taxation’s (JCT) release on March 20 of a new report describing the operation of the federal tax system under current law.

The JCT’s *Overview of the Federal Tax System as in Effect for 2019* provides a broad overview of the various elements of the tax system, including individual and corporate income taxes, estate and gift taxes, payroll taxes, and certain excise taxes. It does not reflect provisions in the tax code that are scheduled to take effect after 2019 and does not include references to termination dates for provisions that are due to sunset in later years, such as the TCJA provisions affecting individuals, estates, and passthrough businesses that are scheduled to expire after 2025.

URL: https://www.jct.gov/publications.html?func=startdown&id=5172

In addition to describing the current system, the report includes a variety of historical tables and projections on topics such as distribution of income and taxes, distribution of selected itemized deductions, income sources for individual taxpayers, business returns by type, federal receipts by source, and the Social Security taxable wage base and rates of tax.

Many of the historical tables include data from 2018 – the first year that the TCJA was in effect. The information in the report could provide fodder for Democratic and Republican taxwriters at the upcoming Ways and Means hearing on the TCJA as they advance their respective arguments on how the new law is affecting taxpayers and shaping the US economy.

**Ways and Means extenders mark-up in the works?**

In other developments, *Politico* reported this week that the Ways and Means Committee may mark up legislation to renew expired and expiring tax extenders provisions sometime in April, before lawmakers adjourn for a two-week spring recess that runs from April 14-28. Other items that could be addressed in the mark-up include retirement savings provisions and IRS reforms, the report said.

The *Politico* report was based on comments from a House Democratic aide and sources off of Capitol Hill. As of press time there has been no official announcement about the panel’s mark-up plans from Ways and Means leadership.

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**Deloitte looks at Treasury’s Policy Statement on the Tax Regulatory Process**

The Treasury Department and the Internal Revenue Service on March 5 issued a Policy Statement on the Tax Regulatory Process which has a stated purpose of clarifying and affirming Treasury’s and the IRS’s commitment to sound regulatory practices and reaffirming their commitment to a tax regulatory process that encourages public participation, fosters transparency, affords fair notice, and ensures adherence to the rule of law.


The areas addressed in the policy statement are highlighted below.
Commitment to notice-and-comment rulemaking

The Administrative Procedure Act (APA) generally requires notice and comment for legislative rules before any final rule becomes effective. The APA exempts interpretive rules from notice-and-comment requirements.


Nonetheless, as a matter of sound regulatory policy, the policy statement says Treasury and the IRS will continue to adhere to their longstanding practice of using the notice-and-comment process for interpretive tax rules published in the Code of Federal Regulations.

Limited use of temporary regulations

Although Treasury and the IRS interpret the Internal Revenue Code as permitting the issuance of immediately effective temporary tax regulations without a statement of good cause, Treasury and the IRS commit to include a statement of good cause when issuing any future temporary regulations. Treasury and the IRS will also continue to adhere to other limitations in the code, which mandate that temporary regulations must expire within three years of issuance and that proposed regulations must be issued simultaneously with any temporary regulations.

Proper scope of subregulatory guidance documents

The most notable element of the policy statement provides that Treasury and the IRS will not "seek judicial deference under Auer v. Robbins, 519 US 452 (1997) or Chevron USA, Inc. v. Natural Resources Defense Council, Inc., 467 US 837 (1984), to interpretations set forth only in subregulatory guidance."

URL: https://cdn.loc.gov/service/ll/usrep/usrep519/usrep519452/usrep519452.pdf
URL: https://cdn.loc.gov/service/ll/usrep/usrep467/usrep467837/usrep467837.pdf

As background, Treasury and the IRS use a variety of forms of guidance to interpret and implement federal tax laws, including revenue rulings, revenue procedures, notices, and announcements (subregulatory guidance). Such guidance often provides taxpayers clarity and certainty concerning the legal interpretation that the IRS intends to apply. The IRS will not take positions inconsistent with its subregulatory guidance when such guidance is in effect.

Auer provides that courts should defer to an agency’s interpretation of its own regulations unless the agency’s interpretation is plainly erroneous or inconsistent with the regulation, conflicts with a prior interpretation, or does not reflect the agency’s fair and considered judgment on the matter. Chevron deference provides that, when a statute is ambiguous, courts must defer to the agency’s reasonable interpretation of that statute.

As noted above, Treasury and the IRS will no longer argue that subregulatory guidance has the force and effect of law. Thus, in litigation before the US Tax Court, as a matter of policy, the IRS will not seek Auer or Chevron deference for interpretations set forth only in subregulatory guidance.

Limit on notices announcing intent to propose regulations

Prior to the issuance of certain proposed regulations, the IRS may publish a notice in the Internal Revenue Bulletin that announces the intention of Treasury and the IRS to issue proposed regulations. Henceforth, Treasury and the IRS will include a statement in each future such notice that, if no proposed regulations or other guidance is released within 18 months after the date the notice is published, taxpayers may continue to rely on the notice but, until additional guidance is issued, Treasury and the IRS will not assert a position adverse to the taxpayer based in whole or in part on the notice.

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Few new tax details – and no ‘Green Book’ – in second tranche of White House budget materials

The Trump administration this week released the second and final round of explanatory details addressing the proposed budget blueprint for fiscal year 2020 that the president submitted to Congress on March 11. The new materials clarify a few of the tax-related proposals that were mentioned only in a general way in the administration’s initial budget release and flesh out the appropriations proposal for the Internal Revenue Service; but they otherwise serve largely to confirm that the administration apparently has no immediate plans for further sweeping changes to the tax code.

The latest budget documents, which came out on March 18, include the Appendix (providing details on proposed appropriations for federal departments and agencies), the Analytical Perspectives report (descriptions of tax and spending proposals, plus economic and accounting analyses related to federal receipts and collections, borrowing, spending, and debt) and a volume entitled Major Savings and Reforms (descriptions of mandatory savings proposals and proposed reductions and eliminations in major discretionary programs).

For the third consecutive year, the administration did not publish a separate “Green Book” with detailed descriptions of tax proposals.

Clarifying tax provisions

In general, the president’s fiscal year 2020 tax-and-spending blueprint envisions declining budget deficits – and eventual balance just beyond the 10-year budget window – even as it assumes a $1.1 trillion extension of provisions in the 2017 tax cut law – affecting individuals, estates, and passthrough entities – that are scheduled to sunset after 2025. (In a related development, the White House Council of Economic Advisers argues in its Economic Report of the President released on March 19 that “the US economy is responding auspiciously to the positive tax shock of the [2017 tax cuts] along multiple margins” and that permanently extending the temporary provisions in the 2017 law would bolster economic growth over the long term.)

On the tax side, the FY 2020 budget calls for a new credit for donations to certain state-sponsored scholarship programs for elementary and secondary education, expanded access to tax-preferred health savings accounts and medical savings accounts, tweaks to selected provisions in the Patient Protection and Affordable Care Act (PPACA), an extension of the Oil Spill Liability Trust Fund, repeal of several alternative energy incentives, regulation of paid tax return preparers, and tightening a handful of taxpayer compliance rules. (For prior coverage of the budget and details of March 14 hearings on the president’s proposal held by the House Ways and Means and Senate Finance committees, see Tax News & Views, Vol. 20, No. 10, Mar. 15, 2019.)

Here is an overview of new details and clarifications included in the latest round of explanatory materials.

Regulation of paid tax return preparers: The new materials confirm that the administration proposes, as it did last year, to give the Treasury Department statutory authority to increase its oversight of paid tax return preparers, explaining that such a change would increase the quality of paid preparers, reduce the need for after-the-fact enforcement of tax laws, and boost the amount of revenue that the IRS can collect.

Worker classification and information reporting requirements: The new materials clarify that the budget blueprint would require the Form 1099-K to be filed with the IRS by January 31. (Under current law, Forms 1099-K must be furnished to the recipient by January 31 and filed with the IRS by March 31.) The proposal also would eliminate the regulations that allow for an automatic 30-day filing extension – a change the administration argues would allow the IRS to receive information about some sources of self-employment income earlier in the filing season.

Mandatory electronic filing of W-2s: The new materials clarify that the budget blueprint would expand the threshold for mandatory electronic W-2 filing to include employers who file 10 or more forms. (The current-law
threshold is 250 returns.) The administration argues this would increase the accuracy of W-2 data and allow the Social Security Administration to make more W-2 data available to the IRS early in the filing season.

**Minimum contribution for PPACA premium tax credit:** The administration stated in its initial release of budget materials that it is calling for a new minimum required contribution percentage for subsidized individuals enrolled in health plans on the PPACA exchange. The new materials explain that the premium tax credits would continue to be calculated based on the required contribution percentage of an individual’s income and the second-lowest-cost silver plan, but the credit amount would be reduced when an individual buys a less expensive plan. As a result, an individual would be required to spend a minimum percentage of income on any health plan. This minimum required contribution would range from 1 to 5 percent on a linear scale for individuals between 100 and 400 percent of the federal poverty level.

**Reduced grace period for PPACA exchange premiums:** The new materials clarify that individuals receiving advance payment of the PPACA premium tax credit for their enrollment in exchange plans would have a 30-day grace period to pay their share of the premium (reduced from 90 days under current law).

**Tax credits for Education Freedom Scholarships:** The budget blueprint includes a new proposal to provide tax credits of up to $50 billion over 10 years for individuals or businesses making donations to certain state-authorized nonprofit organizations that grant so-called “Education Freedom Scholarships” to families of elementary and secondary students to help cover the cost of things such as career and technical dual-enrollment programs, afterschool tutoring programs, and tuition for private schools. The new materials clarify that a taxpayer who donates to one of these organizations and claims the tax credit would not be allowed to claim the itemized deduction for that donation.

**IRS appropriations**

The administration has proposed to increase base funding for the Internal Revenue Service to $11.5 billion in fiscal year 2020 (from $11.3 billion in FY 2019). The budget materials released this week explain how this base amount would be applied across the Service’s four program areas:

- **Taxpayer services:** Just over $2.4 billion (compared to $2.49 billion in FY 2019);
- **Operations support:** Nearly $4.1 billion ($3.72 billion in FY 2019);
- **Information systems modernization:** $290 million ($150 million in FY 2019);
- **Enforcement:** $4.7 billion (compared to $4.86 billion in FY 2019). The administration also has proposed a separate “program integrity cap adjustment” that would boost tax enforcement funding by $15 billion over the next decade – $362 million in fiscal 2020 – and, according to the administration’s projections, would generate a 10-year total of $47 billion in increased collections.

Lawmakers at the March 14 House Ways and Means Committee hearing on the White House budget proposal commented on the significant increase in funds for IRS systems modernization over the FY 2019 appropriation. Treasury Secretary Steven Mnuchin, who was the sole witness at the hearing, told taxwriters that the administration sees beefing up the Service’s technology infrastructure as a key step in improving the agency’s enforcement efforts and reducing the tax gap – the difference between the amount money owed to the government and the amount actually paid.

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