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No shift in partisan positions as Ways and Means members debate impact of 2017 tax law

The partisan divide over the congressional Republicans’ 2017 tax overhaul appeared as deep and wide as ever as the House Ways and Means Committee – now led by the Democrats – held a hearing on March 27 to examine the impact of the law.

Chairman Richard Neal of Massachusetts made clear the majority’s view in the hearing’s title – The 2017 Tax Law and Who it Left Behind – and the members on each side of the aisle spent the session trading statistics about jobs and the economy that bolstered their respective views on whether the legislation is harming or strengthening the US. A distributional analysis of the 2017 law released by the Joint Committee on Taxation (JCT) staff ahead of the hearing provided additional fodder for Democratic and Republican talking points.

URL: https://www.jct.gov/publications.html?func=startdown&id=5173

The debate also carried over onto Twitter, with the committee’s two rival accounts – one for Democrats and one for Republicans – posting their statistics and anecdotes of choice with the hashtag #SinceGOPTaxCuts.
Neal summed up his critique of the tax overhaul – informally known as the Tax Cuts and Jobs Act or TCJA (P.L. 115-97) – in his opening statement, saying, “[Republicans] chose to increase the deficit by $1.5 trillion – which turned out to be $2.3 trillion – and they decided that the most urgent national priorities were to provide a massive tax cut for corporations, business owners, and those who have inherited large sums of money.”

“The 2017 tax law missed every significant opportunity to make a difference in the lives of working people,” he added.

In contrast, Rep. Kevin Brady of Texas, the ranking Republican on the committee – who was the chairman when TCJA was passed – argued that his party improved the tax code in a way that helped middle-class families, small businesses, and US manufacturers while boosting business investment, job growth, and wages.

“Thanks to tax reform and pro-growth policies, vulnerable Americans left behind during the Obama administration are finding jobs with growing paychecks, experiencing less poverty, and expressing new optimism about their future,” Brady said, before criticizing several Democratic talking points that he said had been rebutted or labeled misleading by various fact-checking organizations.

The committee’s Democrats – as well as the witnesses they invited, who included American University law professor Nancy Abramowitz, Elise Gould of the Economic Policy Institute, UCLA law professor Jason Oh, and Communications Workers of America President Christopher Shelton – generally acknowledged the tax code had been in need of reform to improve the international competitiveness of US businesses but argued that the corporate rate cut was too deep, businesses are largely plowing their “windfall” into stock buybacks rather than sharing it with their employees, and the individual benefits are skewed towards wealthier households rather than low- and middle-income taxpayers.

The Republicans’ witness, Douglas Holtz-Eakin, president of American Action Forum and a former White House chief economist and director of the Congressional Budget Office, said it was “simply premature to pass judgement on the TCJA” but that “there are good reasons to credit the new law” for the recent improvement in the US’s economic performance.

Making improvements

While the two parties have – unsurprisingly – differing views on what future tax code changes should occur, they do agree that there are targeted improvements that can be made to address certain obvious errors and unintended consequences in the TCJA. Working with the JCT staff, Republican taxwriters have identified more than 70 fixes to the TCJA they believe are necessary to ensure the law matches their legislative intent – so-called “technical corrections.” Immediately before the Democrats took over the House majority, then-Chairman Brady introduced a discussion draft January 2 that included dozens of these proposed corrections, but Democrats have so far been reluctant to move a large technical corrections package. (Democrats last year did back a tweak to the so-called “grain glitch” in section 199A that expanded incentives for farmers to sell their products to agricultural cooperatives rather than other buyers. For prior coverage, see Tax News & Views, Vol. 19, No. 11, Mar. 23, 2018.)

URL: https://republicans-waysandmeansforms.house.gov/uploadedfiles/tax_technical_and_clerical_corrections_act_discussion_draft.pdf

Recently, however, Neal has begun to indicate that technical corrections could soon be in the cards – in exchange for some legislative wins for the Democrats. (It’s worth noting that Democrats agreed to address the TCJA’s grain glitch in exchange for a boost in the low-income housing credit.) Neal told Tax Notes on March 27 that the possibility of quid pro quos with Republicans to resolve technical corrections is likely, though the taxwriters have not yet determined the potential trade-offs. Addressing speculation that Democrats might seek long-awaited technical corrections to their own 2010 health care law, Neal said, “I don’t know if it would be around [the Patient Protection and Affordable Care Act]. …There are some other options that the staff is exploring with me.”

(See separate coverage in this issue for details of a stand-alone proposal introduced this week that would address the TCJA’s so-called “retail glitch” – the inadvertent exclusion of qualified improvement property from a provision in the 2017 tax cut law that permits 100 percent expensing under section 168(k).)
Bipartisan action ahead on IRS restructuring, retirement savings

On a less divisive note, the Ways and Means Committee is expected to hold its first legislative mark-up of the year on April 2, tackling two tax areas that have significant bipartisan and bicameral agreement: retirement savings incentives and IRS reform. Senate and House taxwriters worked to complete bills on both last year but did not manage to reach agreement on all the details in time to pass final legislation before the 115th Congress officially adjourned. In discussing their 2019 agendas, leaders of the two congressional taxwriting committees said they hoped for fairly quick action on these issues this year.

IRS restructuring: House Ways and Means Oversight Subcommittee Chairman John Lewis, D-Ga., and ranking Member Mike Kelly, R-Pa., released bipartisan legislation on March 28 calling for changes to the Internal Revenue Service’s organizational structure, enhancements to its information technology and cybersecurity operations, revisions to its enforcement policies, and improvements in customer service, all in an effort to make the agency more efficient and taxpayer-friendly.

The bulk of the provisions in the Taxpayer First Act of 2019 are drawn from IRS reform legislation that cleared the House last April (for prior coverage, see Tax News & Views, Vol. 19, No. 13, Apr. 20, 2018), and a year-end tax bill that the chamber approved last December (for prior coverage, see Tax News & Views, Vol. 19, No. 39, Dec. 21, 2018.) It also includes elements of a proposal put forward last year by then-Senate Finance Committee Chairman Orrin Hatch, R-Utah, and ranking Democrat Ron Wyden of Oregon. (For prior coverage, see Tax News & Views, Vol. 19, No. 23, July 20, 2018.)

A section-by-section summary, and a one-page overview of the new Ways and Means proposal are available from the Ways and Means Committee staff.

Retirement savings: Although legislative text was not available at press time, the retirement legislation the panel intends to mark up on April 2 is expected to combine elements of:

- Bipartisan House-approved measures from last year that were aimed at making it easier for smaller businesses to offer tax-qualified retirement savings plans to their employees and encouraging individuals to participate in retirement plans. (For prior coverage, see Tax News & Views, Vol. 19, No. 32, Sep. 28, 2018, and Tax News & Views, Vol. 19, No. 39, Dec. 21, 2018.)
- Bipartisan pension reform companion bills that were introduced in both chambers last year but were not taken up in either taxwriting committee. (For prior coverage, see Tax News & Views, Vol. 19, No. 9, Mar. 9, 2018.)

House tax staff members have indicated that the retirement legislation the panel reports out is likely to be fully offset.

Continued suspense on tax extenders: One significant issue for business and individual taxpayers that remains unresolved is the fate of roughly two dozen temporary tax deductions, credits, and incentives that expired at the end of 2017 and a handful of others that either lapsed at the end of 2018 or will sunset at the end of this year. Ways and Means Chairman Neal had hoped to also address this group of tax “extenders” in the April 2 mark-up. However,
Democratic members were unable to reach consensus this week on whether to reinstate all or just some of the lapsed provisions, and how – or whether – to offset the expected cost. When they reclaimed the majority this year, House Democrats implemented a pay-as-you-go (PAYGO) rule, which generally requires spending cuts or revenue increases to offset legislation estimated to spike the deficit, although that rule can be waived.

Select Revenue Measures Subcommittee Chairman Mike Thompson, D-Calif., and a number of other Democratic taxwriters have said they want to adhere to PAYGO for extenders, but identifying acceptable revenue offsets is a challenge, and Senate Finance Republicans have made clear they do not intend to pay for an extenders bill. (Finance Chairman Grassley and ranking member Wyden released an extenders package of their own late last month. For prior coverage, see *Tax News & Views*, Vol. 20, No. 8, Mar. 1, 2019.)


According to House tax staff members, discussions are continuing among the Democratic members, and a mark-up could occur as early as April 9 if they reach agreement on a package and the question of PAYGO.

— Storme Sixeas and Michael DeHoff
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### Treasury, IRS lower underpayment-penalty relief threshold for 2018

The Treasury Department and Internal Revenue Service announced March 22 that individuals will not be subject to the penalty for underpayment of estimated income taxes for the 2018 tax year if their withholdings and estimated tax payments total 80 percent or more of 2018 taxes owed. (The official policy is spelled out in Notice 2019-25.)


Under current law, taxpayers can avoid the underpayment penalty if their withholdings and estimated tax payments equal at least 90 percent of taxes owed. But in the wake of the significant changes to the tax code enacted in the 2017 legislation informally known as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97), Treasury and the IRS earlier this year lowered the 90 percent threshold to 85 percent for 2018, the first year that the TCJA was in effect (Notice 2019-11).


Since the start of the 2018 tax filing season in late January, however, lawmakers in both parties have called for a further reduction in the threshold for 2018, citing concern that a larger-than-expected number of taxpayers have inadvertently found themselves owing additional tax because they did not adjust their withholdings correctly. Most recently, House taxwriters Kenny Marchant, R-Texas, and Judy Chu, D-Calif., made that case to Treasury Secretary Steven Mnuchin when he appeared before the Ways and Means Committee on March 14 to discuss the Trump administration’s fiscal year 2020 budget proposal. (For prior coverage, see *Tax News & Views*, Vol. 20, No. 10, Mar. 15, 2019.)


In his statement announcing the additional relief, Mnuchin noted “the bipartisan interest from members of Congress on this issue” and commented that “Treasury is exempting even more taxpayers from the usual underpayment penalties in an effort to help those who attempted in good faith to meet their withholding obligations.”

— Michael DeHoff
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House taxwriters introduce fix for ‘retail glitch’

House Ways and Means Committee Democrat Jimmy Panetta of California and Republican taxwriter Jackie Walorski of Indiana introduced legislation this week that would address the inadvertent exclusion of qualified improvement property from a provision in the 2017 tax cut law that permits 100 percent expensing under section 168(k).

The 2017 law, known informally as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97), collapsed three categories of depreciable assets – qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property – into one new category called “qualified improvement property.” However, the TCJA as drafted does not designate this new category as 15-year depreciable property, as the previous three categories had been, nor does it allow for these assets to be expensed. As a result, qualified improvement property is currently treated as having a depreciable life of 39 years under the modified accelerated cost recovery system (MACRS), even if that was not what the drafters of TCJA say they intended.

The Restoring Investment in Improvements Act (H.R. 1869), which was unveiled on March 26, would add qualified improvement property to the list of property depreciable over 15 years for purposes of MACRS under 168(e)(3)(E). It also would clarify that qualified improvement property is eligible for a 20-year recovery period under the alternative depreciation system.

A companion measure (S. 803) was recently introduced in the Senate by Finance Committee member Pat Toomey, R-Pa., and Democratic Sen. Doug Jones of Alabama.

Previous proposed fixes

The treatment of qualified improvement property as 39-year depreciable property was among the first TCJA provisions that lawmakers flagged as needing a technical correction after the law was enacted. (For prior coverage, see Tax News & Views, Vol. 19, No. 7, Feb. 16, 2018.)


House Republicans included a fix for the retail glitch in the year-end tax legislation that cleared the chamber last December. (For prior coverage, see Tax News & Views, Vol. 19, No. 39, Dec. 21, 2018.) But that measure was not taken up in the Senate and it expired as active legislation when the 115th Congress officially adjourned early this past January.


The retail glitch also was addressed in a TCJA draft technical corrections bill that Ways and Means Republican Kevin Brady of Texas released at the end of the 115th Congress in one of his final acts as the taxwriting panel’s chairman. (Brady became the Ways and Means Committee’s ranking member when Democrats took control of the House in the 116th Congress.)

Path forward unclear

Ways and Means Chairman Richard Neal, D-Mass., has not indicated whether the panel will take up the Panetta-Walorski bill as a stand-alone measure and has not provided a timetable for moving a larger TCJA technical corrections package.

Neal has said he will not take up technical corrections legislation until the panel holds hearings on the TCJA and explores policy questions that he argues should have been considered as the law was being drafted and vetted in committee. Like most major tax bills, the TCJA will require numerous corrections, something Democratic members generally attribute to the fact that it moved through Congress so quickly.

— Michael DeHoff
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Senate budget writers approve fiscal 2020 tax-and-spending blueprint

Republicans on the Senate Budget Committee this week approved a fiscal year 2020 budget resolution that would set revenue and spending targets for the next five years; however, it remains unclear whether the plan will ever get a vote on the Senate floor.

The plan

The budget resolution – unveiled on March 22 by Senate Budget Committee Chairman Mike Enzi, R-Wyo. – cleared the panel March 28 on a party-line vote of 11-9. At a high level, the fiscal blueprint envisions deficits peaking at $939 billion (or 3.9 percent of gross domestic product, or GDP) in fiscal year 2022 before starting a downward trajectory. By 2024, the plan’s projected deficit of 2.9 percent of GDP would be consistent with the average deficit recorded over the past 50 years.

Between fiscal years 2020 and 2024, the plan claims total deficit reduction of $538 billion – the combination of $362 billion in reduced spending (mainly a result of assumed reductions in noninterest, non-Social Security mandatory spending such as Medicare, Medicaid, and food stamps) and $176 billion in higher revenue (more detail on that below). These amounts are generally measured against the most recent revenue and spending projections made by the nonpartisan Congressional Budget Office (CBO) in January (with a couple of exceptions on the spending side for anticipated war- and disaster-related outlays). CBO’s “baseline” fiscal projections are required to be developed under so-called “current law” principles which generally assume that laws expire, phase in, or phase out as they are presently scheduled.

On the tax side, that means the CBO baseline – and the Senate blueprint, which uses CBO’s revenue figures as its yardstick – assumes lapsed tax provisions (for example, the so-called “tax extenders”) remain lapsed, and provisions that are schedule to expire, phase in, or phase out at some future date do so as scheduled under currently enacted law. It should be noted, however, that past GOP budgets, particularly in the House, have also banked revenue from expiring tax provisions – revenue that helped reduce apparent deficits – though that arguably ran counter to the policy preferences of many members.

Five-year plan, not ten: In a departure from recent congressional budget plans put forward by both Republicans and Democrats, the Senate GOP fiscal 2020 blueprint covers only five fiscal years – that is, upcoming fiscal year 2020 (which begins on October 1) through fiscal year 2024 – rather than the usual ten years. This decision may have been borne of several factors – including the reality that historically large and growing projected deficits make showing balance within the traditional 10-year budget window – a hallmark of recent GOP budgets – less plausible. The shorter timeframe adopted by Senate GOP budget writers may serve to draw attention away from the fact that balance was not achievable over the normal decade-long span.

It also allows Senate Republicans to sidestep the issue of making permanent the 2017 tax cut bill’s new deduction for qualified passthrough income under section 199A, cuts to the estate tax, and myriad changes on the individual side of the code, the vast majority of which are scheduled to expire after 2025 – policies most Republicans would surely support, but which would come at a large budgetary cost relative to the CBO baseline. However, a message amendment offered by Senate Finance Committee Chairman and Budget Committee member Charles Grassley, R-Iowa, and adopted by committee Republicans, expresses support for making permanent expiring tax cuts under the 2017 bill, even though those expirations would occur outside the budget window.

For his part, Chairman Enzi – also a member of the taxwriting Senate Finance Committee – couched the shorter-duration budget as a pragmatic attempt at a more politically feasible blueprint that, while not solving every fiscal dilemma, is a first step that at least puts the budget on a better trajectory in the near term.

“This budget represents an important first step toward addressing our country’s fiscal challenges and provides a path for us to begin working together to achieve real deficit reduction,” Enzi said at the opening of the two-day mark-up session on March 27. “I hope that this budget will mark the beginning of a serious conversation on issues that Congress has been content to ignore for too long.”
A few discrete tax policy assumptions included in budget: As already noted, the Senate GOP budget assumes revenue levels over the next five fiscal years of $176 billion above CBO’s current-law baseline. Though the budget resolution itself cannot be prescriptive as to policy changes – those determinations necessarily fall to the various authorizing committees – the budget’s accompanying documents indicate the blueprint assumes that roughly half of the $176 billion could be raised through changes aimed at making the Highway Trust Fund solvent that are also consistent with the “user-pay principle” with the remainder “generated by increasing federal employee retirement contributions and...changes to other mandatory and regulatory programs.”

The nod to a potential hike in excise taxes on fuels – or perhaps the implementation of a vehicle-miles-traveled fee – is notable both for its break with longstanding political reality that has rendered the gas tax off-limits as well as its implicit recognition that a solution must be found to keep the Highway Trust Fund solvent past September 30, 2020, when the current highway authorization bill is scheduled to expire.

While not a policy assumption per se, the budget resolution also includes a “deficit-neutral reserve fund” – practically speaking, a messaging tool that enables lawmakers to signal support for a broadly stated policy – designed to potentially smooth Senate passage of future legislation in the area of “improving tax administration.” (See separate coverage in this issue about the House Ways and Means Committee’s plans to move legislation in this area.)

At mark-up, Democrats offered a number of messaging amendments generally aimed at rescinding tax cuts for upper-income individuals and multinational businesses, and expanding relief for low-income households, but Republicans swatted them all away.

Reconciliation instructions: The Senate GOP budget plan also includes so-called reconciliation instructions that call on five committees to report legislation by July 31 that on net would reduce the deficit by a total of at least $94 billion over the next five years – roughly one-fifth of its total proposed deficit reduction – with the Senate Finance Committee receiving the largest deficit reduction instruction ($50 billion). Though again, because the resolution cannot dictate policy to authorizing committees, it is unclear whether budget writers envision the Finance Committee meeting its instruction through highway-related tax policy, changes to other programs within its jurisdiction (for example, Medicaid and Medicare), or some combination of the two.

An amendment offered at mark-up by Budget Committee member Ron Wyden of Oregon, who is also the ranking Democrat on the Senate Finance Committee, to strike the resolution’s reconciliation instructions – due to his belief that Finance’s savings would inevitably have to come from health care programs – failed on a party-line vote.

In any case, the instructions are likely of little practical import. In order to unlock to the reconciliation process that can shield subsequent legislation from a filibuster in the Senate – enabling it to be passed with a simple majority vote, rather than the usual three-fifths vote needed to clear procedural hurdles in that chamber – Senate Republicans would have to merge their plan with a House Democratic budget, an outcome that is highly unlikely.

End of the road?

Even as Budget Committee Republicans advanced their fiscal plan this week, it remained unclear whether Senate Majority Leader Mitch McConnell, R-Ky., would bring the budget to the Senate floor for a vote. Some in the GOP are wary of engaging in the required 50 hours of floor debate and inevitable amendment free-for-all – termed a “vote-a-rama” – after debate time is expired, particularly if the plan stands little chance of being conferenced with a House Democratic budget that may or may not emerge. (It is uncertain whether House Budget Committee Chairman John Yarmuth, D-Ky., can draft a resolution that both moderate and progressive Democrats can support both in his panel and on the House floor.)

Sen. Sheldon Whitehouse, D-R.I., may have summed up many members’ feelings in his opening statement on March 27.

“There’s the world’s smallest press table over there with the world’s most bored press corps reporting on the world’s most useless hearing,” Whitehouse joked.

Maybe not completely useless: Still, the Senate GOP budget, even if it does not get a floor vote, has some practical utility in that it lays down another marker in terms of how to approach fiscal 2020 appropriations. Absent a deal to raise the statutory “sequester” caps – as Democrats and Republicans have done on three separate occasions since
2013 – defense and nondefense appropriations will be reduced by 11 percent and 9 percent, respectively, beginning October 1 relative to their enacted levels this year.

The Senate GOP budget adopts the sequester spending levels for fiscal year 2020 for both defense and nondefense accounts (though defense would get an additional $67 billion through the Overseas Contingency Operations account, which is not subject to the statutory caps). But in a nod to bipartisanship, the blueprint also includes a mechanism (in the form a deficit-neutral reserve fund) intended to smooth Senate passage of a future bill that lifts the caps provided it is fully paid for.

That would be a stark reversal from the most recent sequester deal – the Bipartisan Budget Act of 2018 – which lifted the caps by roughly $300 billion over two years and was almost entirely unpaid for.

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