Neal to pursue expanded family tax credits as tradeoff for fix to ‘retail glitch’

House Ways and Means Committee Chairman Richard Neal, D-Mass., said this week that he would push for a floor vote on legislation to expand the earned income tax credit (EITC) and the child tax credit and indicated that Democrats remain open to backing a technical correction to the so-called “retail glitch” in the GOP’s 2017 tax code overhaul (known informally as the Tax Cuts and Jobs Act, or TCJA) in exchange for Republican support for the expanded refundable credits.

Weren’t we just here?

The Ways and Means Committee approved temporary expansions of the EITC and child tax credit as part of a larger bill (H.R. 3300) it marked up last June, but that legislation was never taken up by the full House. (For details on H.R. 3300, see Tax News & Views, Vol. 20, No. 21, June 21, 2019.)
As House and Senate negotiators attempted to reach an agreement on extenders and other tax priorities in the closing weeks of 2019, Neal pushed to get the expanded refundable credits included in that package and proposed adding technical corrections such as a fix to the retail glitch – a drafting error in the TCJA that inadvertently excluded qualified improvement property from the list of property that is depreciable over 15 years under MACRS and eligible for a 20-year recovery period under the alternative depreciation system – as a sweetener to gain Republican support. (Republicans were unable to get a technical correction for the retail glitch through Congress in 2018 even though they controlled both chambers. Since Neal assumed the Ways and Means Committee gavel after Democrats took control of the House in 2019, he generally has been reluctant to advance TCJA technical corrections, although he has been open to other fixes to the law, such as repealing the “church parking tax,” which was included in legislation enacted at the end of 2019.)


But Neal’s offer fell flat with Republicans, who argued that the changes he was seeking were too expensive. (The Joint Committee on Taxation staff pegged the 10-year cost of the proposed EITC and child credit expansions in H.R. 3300 – which would only be effective for three years – at roughly $100 billion. A longer-term or permanent expansion would be even more costly.)

‘Leverage’ for Democrats?

With the memories of the 2019 tax bill negotiations still fresh, Neal told reporters on January 8, following a meeting of Ways and Means Committee Democrats to discuss their agenda for the coming year, that a floor vote on beefed-up family tax credits was “eminently doable,” although he did not indicate when it might take place. He also suggested that the Republicans’ desire to resolve the treatment of qualified improvement property might spur them to reconsider the offer they turned down just last month.

“We certainly don’t have a closed mind on the depreciation issue, but we do think that was a blatant mistake that was made in the [TCJA] and we’d like some leverage for it,” he said.

But exactly how much leverage Democrats would have is unclear. To advance Neal’s proposal the House would either have to waive its pay-as-you-go budget rule or approve significant tax increases to offset the expected revenue loss, which would make it difficult to attract significant Republican support.

At least one prominent GOP lawmaker is skeptical that Democrats will be able to muscle Neal’s proposed swap through Congress. Senate Finance Committee Chairman Charles Grassley, R-Iowa, told reporters January 8 that such a deal would still be “impossible” for Senate Republicans to accept.

“We were exploring all those things for about six weeks before we adopted our extender bill and it just didn’t fly in the Senate among Republicans, particularly in the leadership,” Grassley said.

Neal, Lewis request guidance on ’church parking’ repeal

In other developments this week, Neal and Ways and Means Oversight Subcommittee Chairman John Lewis, D-Ga., asked the Internal Revenue Service to “establish an expedited process for tax-exempt organizations to obtain refunds of unrelated business income tax (UBIT) paid on parking and transportation benefits paid to their employees.”


The request stems from a provision in the 2019 year-end tax bill that repeals a TCJA requirement under section 512(a)(7) that tax-exempt organizations – including churches – include as UBIT the value of qualified transportation fringe benefits. (Because the TCJA provision has been repealed retroactively, organizations that paid UBIT on those benefits are entitled to a refund.)

Neal and Lewis also asked the Service to “promptly issue guidance on the appropriate steps organizations should take in the refund process, so that they can receive the money the are owed without delay or further hardship.”

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Year-end spending deal requires Treasury, IRS to provide tax-related information on US firms, individuals in Puerto Rico

Language baked into a House committee report undergirding the 2019 year-end spending bill (H.R. 1158) that provides funding to the Internal Revenue Service for fiscal year 2020 requires Treasury and the IRS to issue reports in the coming months that lay out certain tax-related information on the activities of US firms and individuals in Puerto Rico.

URL: https://www.congress.gov/bill/116th-congress/house-bill/1158/text?q=%7B%22search%22%3A%22h.r.+1158%22%5D%7D&r=1&s=1

H.Rpt. 116-122

The reporting requirements imposed on the Treasury Department and IRS were included in a committee report (H.Rpt. 116-122) issued by the House Appropriations Committee during June of 2019 in conjunction with its version of H.R. 3351, the Financial Services and General Government appropriations bill, which put forward House Democrats’ vision of fiscal year 2020 funding for the Treasury Department and a handful of agencies including the IRS.

URL: https://www.congress.gov/congressional-report/116th-congress/house-report/122/1

Though a House-Senate conference committee did not ensue for any of the 12 fiscal 2020 spending bills – and formal conference reports thus were not issued – House Appropriations Committee Chairwoman Nita Lowey, D-N.Y., submitted a statement for the Congressional Record on December 17, 2019, that effectively swept in these and other reporting requirements that were put forward by the House and Senate Appropriations committees earlier in the spending cycle.

The appropriations process for fiscal year 2020 (which ran through September 30 of last year) was ultimately put to rest on December 20, 2019, when President Trump signed H.R. 1158 into law, along with a second multi-bill appropriations package (H.R. 1865) which also carried several tax priorities such as extensions of expired and expiring tax provisions, repeal of some revenue provisions enacted in the Patient Protection and Affordable Care Act of 2010, retirement security measures, fixes to some of the policy changes made by the 2017 tax overhaul known as the Tax Cut and Jobs Act (P.L. 115-97), and tax relief for victims of certain federally declared natural disasters – that had been gridlocked for months, or in some cases even longer. (For prior coverage of H.R. 1865, see Tax News & Views, Vol. 20, No. 42, Dec. 19, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/191219_1.html

What the appropriators want to know

H.Rpt. 116-122 imposes two separate reporting requirements on tax administrators.

Controlled Foreign Corporations: The first requires the Treasury Department to submit a report – to the Appropriations committees – within 90 days of enactment that details “the amounts of taxes avoided by companies that establish and operate controlled foreign corporations in Puerto Rico during the past five years, as well as the amount of territorial and local taxes paid, the amount of sales per year, and the number of jobs created on the island.”

Though not detailed in the committee report, this request for information appears aimed at Puerto Rico Act 154, which was passed in 2010 and imposes a 4 percent excise tax on foreign corporate subsidiaries based on the island. The excise tax – which the IRS, in Notice 2011-29, said it would not challenge as creditable as a tax paid in lieu of an income tax under section 903 – constitutes a substantial portion of territorial revenue; but it has come under fire in some quarters, including by Treasury Secretary Steven Mnuchin, who indicated as recently as September of 2019 that the provisions of Notice 2011-29 may be brought to end by the Trump administration.


If the administration were to take such action, the question effectively would then become what territorial revenue source would take the place of Act 154 – an issue that could be complicated by the enactment of the US’s 2017 tax code overhaul (P.L. 115-97).
**Puerto Rico Acts 20 and 22:** The reasoning behind the second reporting requirement is more plainly laid out. The House Appropriations Committee states that it is "concerned by the interplay between new territorial tax laws (Puerto Rico Acts 20 and 22 of 2012) and section 933 of the US Code that enables tax avoidance and denies revenues to federal, state, and territorial governments, including Puerto Rico."

In general, Puerto Rico Acts 20 and 22 provide tax incentives, respectively, for exporting firms based on the island and for new residents with respect to their passive income. Meanwhile, US tax code section 933 excludes from gross income – for US tax purposes – certain amounts derived while an individual taxpayer is a “bona fide resident of Puerto Rico.”

To better understand perceived abuses occurring on account of these provisions (for example, instances in which individuals and business are able to avoid both federal and territorial tax on certain types of income), the committee directs the IRS to provide a report within 180 days of enactment that specifies the "number of individuals and business that have relocated from each state and the District of Columbia to Puerto Rico since 2012 and have been granted tax exemptions under Puerto Rico Acts 20 and 22."

It goes on to request information on the amount and type of federal taxes that were paid by such individuals and businesses in the five years leading up to their moves to the island, as well as the location of their previous US-based residences. Finally, the committee directs the IRS to provide policy recommendations that would minimize revenue losses to the federal, state, and territorial governments.

On December 20, 2019, the same day President Trump signed the two appropriations packages into law, four House Democrats – Jose Serrano, Nydia Velázquez, and Alexandria Ocasio-Cortez of New York and Raúl Grijalva of Arizona – penned a letter to Secretary Mnuchin on this very issue.


“...Acts 20 and 22 of Puerto Rico have led to significant tax avoidance by wealthy individuals ‘residing’ in the island,” the letter states. “While some have tried to promote these tax breaks as economic development tools, we believe that these giveaways have not resulted in any benefit for Puerto Rico.”

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**Tensions continue over French digital services tax, US tariff threats**

Tensions between the US and France that ratcheted up in 2019 over a new French digital services tax (DST) and the Trump administration’s proposed response remain unresolved so far this year as France and Europe's trade leader pushed back against US tariff threats. The standoff has also raised concerns that it could further complicate the broader multilateral effort underway through the Organisation for Economic Co-operation and Development (OECD) to revise international tax rules for the digital age, while a top congressional taxwriter dismissed the prospect of reaching a near-term agreement at the OECD as unrealistic.

**Threats and counter-threats**

After France finalized its DST last year, the office of the US Trade Representative (USTR) launched what’s known as a 301 investigation and concluded in December that the tax is discriminatory against US companies. USTR proposed imposing tariffs of up to 100 percent on a variety of French imports with an approximate trade value of $2.4 billion. (For prior coverage, see Tax News & Views, Vol. 20, No. 39, Dec. 6, 2019.) This in turn prompted threats of retaliation by the European Union (EU). (Trade policy is an exclusive power of the EU, so an individual state such as France cannot impose tariffs on its own.)


French Finance Minister Bruno Le Maire tweeted on January 6 that “[i]f the Americans decide to impose trade sanctions against digital taxation, we will fight back within the framework of the [World Trade Organization]. I call on the United States to return to wisdom and work toward a compromise at the OECD.”
After meeting with La Maire on January 7 to discuss potential countermeasures, European Commissioner for Trade Phil Hogan confirmed that the Europeans will back France in the DST dispute.

"The European Commission will stand together with France and all of the member states who wish to have the sovereign right to impose digital taxation on companies in a fair way," Hogan said during a joint news conference. "We will look at all possibilities if any tariffs and measures are imposed by the United States."

Le Maire said during the same press conference that he and US Treasury Steven Mnuchin had spoken by phone January 6 and agreed "to try and reach a compromise on digital taxation at the OECD...in the next 15 days” before they next meet at the World Economic Forum meeting in Davos, Switzerland, later this month. Tying the two tax discussions together, he added that the imposition of US tariffs on France in the meantime would “mean the end of negotiations” at the OECD.

Hogan is scheduled to visit Washington January 14-16 to meet with US Trade Representative Robert Lighthizer about a “reset of the EU-US trade relationship,” and the two are expected to discuss the DST and potential tariffs further.

US businesses split over proposed tariffs

In other developments, a January 7 public hearing held by the USTR on the proposed tariffs exposed a rift within the US business community. The Computer and Communications Industry Association (CCIA), a trade association that represents several of the highest-profile Internet companies that would be hit by the French DST, endorsed the plan to impose tariffs on French goods including wine, cheese, and luxury handbags “to deter France and to send a strong message to other countries who are finalizing or have proposed a similar national digital tax.” However, other stakeholders that would be impacted by tariffs but not DSTs, such as wine wholesalers and retailers, testified in opposition.

The US Chamber of Commerce also opposes the imposition of tariffs in this case, and CEO Tom Donohue said at a January 9 press conference that he believes the use of tariffs “puts the cost on the American company.”

Chairman Grassley weighs in

On Capitol Hill, meanwhile, Senate Finance Committee Chairman Charles Grassley, R-Iowa, told reporters January 7 that the proliferation of digital taxes among various EU member states underscores the need for a multilateral agreement.

"Europe better wake up to the fact they’re going to suffer a lot if we don’t get some agreement through” the OECD, Grassley said. "We shouldn’t have to put these tariffs on. We shouldn’t have 20 different countries in 20 different ways working with our digital platforms to have complicated systems of taxation. ...A global agreement is the only thing that’s going to satisfy them.”

A day later, Grassley also told reporters that it is not reasonable to expect a negotiated compromise within the two-week timeline set by La Maire and Mnuchin.

“Can’t be done, and it shouldn’t be done in the next 15 days,” Grassley said. "It’s got to be done right or it’s going to be the United States subsidizing the rest of the world.”

— Storme Sixeas
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White House FY 2021 tax-and-spending blueprint expected February 10

The Trump administration is expected to release its proposed budget for fiscal year 2021 on February 10, one week later than the statutory deadline. The news was reported this week by Politico citing comments from an unnamed White House official.
Under the Budget and Accounting Act of 1921, every presidential administration is required to send Congress its budget request for the upcoming fiscal year no later than the first Monday in February – which this year falls on February 3 – but in practice that deadline often goes unmet and there is no penalty for late delivery of a budget. Last year, for example, President Trump’s fiscal 2020 budget proposal was delayed until mid-March, which he blamed on a partial government shutdown that stretched from December 22, 2018, through January 25, 2019; 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 said little about potential tax proposals in the upcoming budget package or whether it intends to release a “Green Book” offering detailed descriptions of those proposals. (The White House has not provided a Green Book for any of its previous budget blueprints.) President Trump might shed some light on his plans around the budget when he delivers his State of the Union message on February 4.

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**IRS touts $57.5 billion in enforcement revenues for fiscal year 2019**

The Internal Revenue Service’s taxpayer compliance and enforcement programs led to revenue collections of $57.5 billion in fiscal year 2019, according to an annual report released by the agency on January 6.


**Addressing the ‘tax gap’ and other IRS activities**

The report notes that the most recent estimate of the gross federal “tax gap” (the difference between the amount of taxes owed to the government and the amount actually paid) is $441 billion, and the net federal tax gap (that is, the gross amount reduced for late payments and collections through enforcement activities) is $381 billion. Those figures represent averages covering tax years 2011 through 2013. (The previous estimates, which covered tax years 2008 through 2010, showed a gross tax gap averaging $458 billion and a net gap of $406 billion.)

The report highlights the Service’s efforts to whittle away at the tax gap through criminal investigations and its whistleblower program as well as targeted initiatives focused on offshore tax compliance issues, large businesses, tax-exempt and government entities, employment tax collection, tax-related identity theft, and abusive tax shelters (particularly those involving trust arrangements, microcaptive insurance shelters, and syndicated conservation easements).

The Service is also monitoring emerging compliance issues stemming from the rise of the “sharing economy,” which generally refers to business generated by online platforms that bring together service providers and customers (for example, ride-sharing and e-commerce platforms), and the increasing use of virtual currency, the report says.

Among the Service’s other activities highlighted in the report are those related to implementing the 2017 tax code overhaul known informally as the Tax Cuts and Jobs Act (P.L. 115-97), modernizing its information systems and beefing up cybersecurity operations, improving tax administration by collaborating with partners in the private sector and in state revenue agencies, and improving customer service through workforce training and development initiatives.

**Taxpayer Advocate report**

In a related development, Acting National Taxpayer Advocate Bridget Roberts on January 8 released her 2019 Annual Report to Congress highlighting the agency’s performance and the key challenges it faces. Among its findings, the report notes that the Service continues to struggle in its efforts to improve customer service and equitably enforce the nation’s tax laws – issues the Taxpayer Advocate attributes in large part to inadequate funding from Congress.

**URL:** https://taxpayeradvocate.irs.gov/2019AnnualReport
In conjunction with the report, Roberts also released a “Purple Book” with legislative recommendations for strengthening taxpayer rights and improving tax administration.


2019 individual tax filing season begins January 27

Also this week, the Service announced that it will begin accepting and processing tax year 2019 returns for individual filers on Monday, January 27. The deadline to file 2019 tax returns and pay any tax owed is Wednesday, April 15.


The January 27 start date was set “to ensure the security and readiness of key tax processing systems and to address the potential impact of recent tax legislation on 2019 tax returns,” the announcement said.

One of the more notable tax legislative developments that could be reflected in some 2019 returns, especially for businesses, was the enactment late last month of a government spending bill (H.R. 1865) that also included extensions of expired and expiring tax provisions, repeal of some revenue provisions enacted in the Patient Protection and Affordable Care Act of 2010, retirement security measures, fixes to some of the policy changes made by Tax Cuts and Jobs Act, and tax relief for victims of certain federally declared natural disasters. (For prior coverage, see Tax News & Views, Vol. 20, No. 42, Dec. 19, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/191219_1.html

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