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House Democrats to release infrastructure bill by month’s end, Pelosi says

House Speaker Nancy Pelosi, D-Calif., told reporters January 16 that Democrats will release an infrastructure spending package later this month after they return from a week-long recess coinciding with the Martin Luther King holiday. (The chamber will be away the week of January 20 and will be back in session on January 27.)

Pelosi gave no details about the package or how it would be paid for, but Majority Leader Steny Hoyer, D-Md., stated in an interview with CQ Rollcall earlier this week that a House infrastructure proposal would be completely offset.

“We’re [going to] have to figure out how to pay for it on our own. That’ll be tough, but we’re going to work on that,” he said.

Decisions about specific offsets – such as user fees, an increase in the federal gasoline tax, or possibly even nontransportation funding sources like an increase in the corporate tax rate – would be left to the House Ways and Means Committee and the House Transportation and Infrastructure Committee.
Pelosi indicated that she hoped to be able to work with the Trump administration on this issue but commented that “so far, they have not come on board.”

An effort last year by Pelosi and Senate Minority Leader Charles Schumer, D-N.Y., to reach a deal with the White House on a $2 trillion infrastructure package broke down after President Trump said he would refuse to work with Democrats in Congress while they continue to investigate him and his administration. (For prior coverage, see Tax News & Views, Vol. 20, No. 18, May 24, 2019.)

Neal commits to Ways and Means mark-up of green energy tax package

In other House developments, Ways and Means Committee Chairman Richard Neal, D-Mass., told reporters January 14 that his panel will mark up legislation that would expand current-law tax incentives intended to promote energy efficiency, renewable energy, and a reduction in carbon emissions, as well as implement new provisions to encourage the development and use of green energy technologies.

GREEN Act: The legislation presumably would be based on the discussion draft of the Growing Renewable Energy and Efficiency Now (GREEN) Act, which Select Revenue Measures Subcommittee Chairman Mike Thompson, D-Calif., unveiled last November. (For details, see Tax News & Views, Vol. 20, No. 38, Nov. 22, 2019.) But Neal did not indicate whether the committee’s bill would be as expansive as the GREEN Act, nor did he say when a mark-up might take place.

Democrats in both chambers had hoped that a significant green energy package would be included in a 2019 year-end tax agreement; but energy provisions in the tax deal that was signed into law late last month as part of a larger government spending bill (H.R. 1865) were limited, for the most part, to simple extensions of – and a few modifications to – energy incentives that expired or were set to expire between 2017 and 2019. H.R. 1865 did not include priorities such as an expansion of the investment tax credit to include energy storage and an expansion of the current-law credit for electric vehicles. (For additional details, see Tax News & Views, Vol. 20, No. 42, Dec. 19, 2019.)

Enactment this year unlikely: Green energy legislation likely would clear the committee and the House largely along party lines but would face significant hurdles in the Republican-controlled Senate, particularly around the question of how it would be paid for.

The GREEN Act discussion draft does not include a cost estimate for the proposed incentives nor does it propose any revenue-raising provisions that could serve as potential offsets. Instead, the revenue title simply indicates that pay-ffors are “to be provided.” Neal did not address those issues when he spoke to reporters this week but Ways and Means Democrats in the past have discussed offsetting the cost of green energy incentives by repealing or clawing back current-law tax provisions benefiting the oil and gas industry. A House-approved bill that included those offsets would have difficulty attracting significant Republican support across the Rotunda.

Given that dynamic, a green energy bill could be viewed more as an opportunity for House Democrats to telegraph their tax policy priorities ahead of the 2020 presidential and congressional elections rather than a plan likely to become law.

White House plans ‘Tax Cuts 2.0’ package

Also this week, National Economic Council Director Larry Kudlow said in an interview with CNBC January 15 that the Trump administration intends to release a proposal for middle-class tax cuts in the coming months that would build on the provisions of the president’s signature 2017 tax code overhaul known informally as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97).

Kudlow offered few details on what the White House plan would include but noted that it is being developed in consultation with Ways and Means Committee ranking member Kevin Brady, R-Texas, who was chairman of the panel...
when the TCJA moved through Congress and was signed into law. In the fall of 2018, while Republicans still controlled the House and Brady held the Ways and Means gavel, Brady advanced his own version of Tax Cuts 2.0 legislation – a trio of bills that would have permanently extended the TCJA’s temporary tax cuts for individuals, pass-through entities, and estates (all of which are currently scheduled to expire at the end of 2025) and provided new incentives to promote retirement and “family” savings and encourage the formation of start-up businesses. (For details, see Tax News & Views, Vol. 19, No. 30, Sep. 14, 2018.) But those bills were never taken up in the Senate, as they lacked the Democratic support necessary to secure the 60-vote supermajority required to overcome procedural hurdles in that chamber, and they expired as active legislation when the 115th Congress officially adjourned at the beginning of last year. (It should be noted, though, that a number of the retirement savings provisions that Brady proposed are similar to those that were incorporated into the House version of the SECURE Act in the 116th Congress and made their way into last December’s tax deal.)

Kudlow did not specify when the White House plan would be released, other than to say it would “come out sometime later during the [presidential] campaign.” Also unclear is whether the plan would be released as an outline, a legislative discussion draft, or a formal legislative proposal.

A Tax Cuts 2.0 plan is not expected to advance in the House while Democrats hold the majority. Kudlow appeared to acknowledge that the plan would serve initially as a campaign talking point for the president and congressional Republicans and that its ultimate enactment would depend on Republicans retaking the House and retaining control of the Senate and the White House in the upcoming elections.

In his interview, he appeared confident that the GOP would regain the House majority, remarking that Kevin Brady “will undoubtedly be the new chairman of the House Ways and Means Committee” in 2021.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

**US, France remain at an impasse over French DST**

France is holding tough on its new digital services tax (DST) in the face of threatened US tariffs, and a visit to Washington this week by the European Union’s trade minister showed no sign of breaking the impasse.

In an opinion piece published in the Wall Street Journal January 13, Bruno Le Maire, France’s minister of economy and finance, again disputed the determination by the office of the US Trade Representative (USTR) that the DST discriminated against US companies, and he said the stiff retaliatory tariffs that US has threatened to impose on French goods including wine, cheese, and luxury handbags would be “ineffective.”

“France won’t withdraw its national tax because of sanctions – only an international deal will produce that result,” Le Maire wrote, referring to the ongoing effort through the Organisation for Economic Co-operation and Development (OECD) to revise international tax rules to recognize the digitalized economy. The proposed US tariffs have prompted threats of retaliation by the EU. (Trade policy is an exclusive power of the EU, so an individual state such as France cannot impose tariffs on its own.)

Le Maire also reiterated the message that France will repeal the tax on high-profile Internet companies – 3 percent on certain revenue, retroactive to January 1, 2019 – when and if there is an agreement reached by the 130-plus countries participating in the broader OECD project; but he characterized the new law as “a matter of fairness and efficiency.”

“The digital economy has radically changed the way consumers buy goods and services – and upended the principles of modern taxation,” he wrote. “Companies now create economic value without any physical presence, which leaves government without a way to tax them. By introducing a digital tax, France is adapting to this new reality.”
**Withering on the vine?**

The wine industry is not the target of France’s DST but is already feeling the impact of another US trade dispute with Europe and could be caught in the crossfire by these additional tariffs being threatened by the US and EU.

As part of a trade dispute over airplane subsidies, many European wines, including those from France, have been subject to US tariffs of 25 percent since October 2019, and that may soon increase to 100 percent and expand to include Europe’s sparkling wines. The EU, in turn, has proposed retaliatory tariffs on US wines in response to the US action in that case. And under the US’s proposed DST retaliation, French champagne would be slapped with a 100 percent tariff.

Pushing back on this dynamic, the 108 members of the Congressional Wine Caucus, co-chaired by Rep. Mike Thompson, D-Calif., and Rep. Dan Newhouse, R-Wash., sent a letter to USTR Robert Lighthizer on January 14 saying the tariffs on European wine are already damaging US winemakers, importers, distributors, retailers, and restaurateurs – “from grape to glass.”


“We understand that you must find appropriate means to address the [World Trade Organization’s aircraft] decision and France’s digital services tax issue, but we ask that you consider the effects it could have on American businesses,” the letter, said. “Further escalation of these disputes will lead to even greater disruptions in the transatlantic wine trade and jeopardize thousands of small and medium sized businesses and the tens of thousands of US jobs they support across the country.”

In a meeting January 15 with European Commissioner for Trade Phil Hogan, House Ways and Means Committee Chairman Richard Neal, D-Mass., amplified the message of the wine industry, noting in a statement after the two met that he had “reiterated how critical it is for American workers, businesses, and wine producers that the issue not persist and spark the imposition of severe tariffs.”

**Not backing down**

Rep. Kevin Brady, R-Texas, the senior Republican on Ways and Means, also met with Hogan this week and said in his own statement that the committee’s GOP members were “encouraged by Commissioner Hogan’s belief that we share common goals on China, WTO reform, the Airbus dispute, and solutions to the taxation of digital services.”

In remarks January 16 at an event hosted by the Center for Strategic and International Studies, however, Hogan said that while his Washington meetings had so far been “productive,” he would “robustly defend” European interests on all of these issues, and he labeled the Trump administration’s use of tariffs against its trading partners “hardly a sensible approach.”

“No other market is as free and open for US businesses as the EU,” he said. “Where else are you as welcome? I might add I am coming under pressure to defend this level of openness given that our European businesses can be hit with unjustified tariffs and restrictions at a moment’s notice.”

Talking to reporters after a meeting with Lighthizer, Treasury Secretary Steven Mnuchin, and other Trump administration officials later in the day, Hogan nonetheless commented that he “didn’t expect to be successful in resetting the [US-EU] relationship in a few days,” and was “very happy with the level of engagement, the very positive cooperative spirit we had with all our interlocutors in the administration.”

— Storme Sixeas
Tax Policy Group
Deloitte Tax LLP
Senate clears USMCA trade deal, removing potential vehicle for tax legislation this year

The Senate on January 16 voted 89-10 to approve President Trump’s signature rewrite of the North American Free Trade Agreement (NAFTA), known as the United States-Mexico-Canada Agreement (USMCA). Under the Trade Promotion Authority (TPA) process under which it was moved, the USMCA’s implementing language was unamendable and subject to limited debate. The language had been previously approved by the House on December 19 of last year after more than a year of negotiations among the three countries. The president is expected to sign the measure into law.

The trade bill’s relevance to the tax world revolves mainly around its prior status as a potential tax vehicle. Late last year – when it was not clear whether a spending bill would be capable of carrying a tax title – the USMCA was occasionally discussed as an alternative vehicle. (Of course, because the TPA process precludes amendments, any tax changes would have had to move alongside the trade bill as part of a separate legislative “side-car,” rather than within the trade bill itself.)

In the end, of course, the fiscal year 2020 appropriations legislation that came together and was signed into law late last month carried a number of long-stalled tax priorities, including 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 (TCJA, P.L. 115-97), 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

On a prospective basis, this week’s passage of the USMCA removes the trade deal as a potential vehicle to carry extensions of temporary tax provisions, technical corrections to the GOP’s 2017 tax code overhaul, or other tax proposals that lawmakers may hope to advance in 2020.

— Alex Brosseau
Tax Policy Group
Deloitte Tax LLP

Implementation of TCJA provisions related to Opportunity Zones, multinationals, prompts investigations

Treasury Department Acting Inspector General Richard Delmar confirmed this week that his office has opened an investigation into whether Qualified Opportunity Zone designations are being inappropriately awarded based on political rather than economic considerations.

The Qualified Opportunity Zone program, which was enacted in the 2017 tax code overhaul informally known as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97) is intended to promote investment in economically underdeveloped areas by granting investors tax deferral and other tax benefits on certain capital gains reinvested in Opportunity Zone funds. But press reports in recent months have suggested that unmerited Opportunity Zone designations have been awarded to projects funded by certain prominent, wealthy investors.

That news prompted Sen. Cory Booker, D-N.J., (who had sponsored legislation that was a forerunner of the Opportunity Zone program) to send a letter to the Inspector General’s office last October requesting “a complete review of all Treasury Department certified Opportunity Zones for eligibility requirement conformance and...details on actions taken by agency officials not in compliance with the Opportunity Zones guidelines.” Booker was joined on the letter by Democratic Reps. Emanuel Cleaver of Missouri and Ron Kind of Wisconsin.

URL: https://www.booker.senate.gov/?p=press_release&id=1005
Wyden questions TCJA reg-writing process

Also this week, Senate Finance Committee ranking member Ron Wyden, D-Ore., along with Finance Committee Democrats Sherrod Brown of Ohio, Robert Casey of Pennsylvania, Sheldon Whitehouse of Rhode Island, and Catherine Cortez Masto of Nevada, announced that they have launched an investigation into whether the Treasury Department drafted regulations implementing the TCJA’s international tax provisions in a way that provided “a windfall of tens, if not hundreds, of billions of dollars in additional tax cuts” to certain multinational corporations.


In a January 16 letter to Treasury Secretary Steven Mnuchin, the four senators noted the Finance Committee’s “obligation to conduct oversight of the Trump administration’s implementation of the 2017 Republican tax law,” including “the extent to which closed-door lobbying influenced the process of drafting regulations and whether political appointees used an expansive understanding of their authority to provide additional billions in taxpayer giveaways to our nation’s wealthiest corporations.”

The letter makes a wide-ranging request for information from Treasury including, among other things, analyses of the revenue impact of regulations issued on the TCJA’s international provisions; legal analysis from the general counsel’s office on Treasury’s authority to “expansively interpret” the TCJA’s international provisions; analyses of how a regulatory decision on an international tax provision in the TCJA “might benefit or harm a specific company, a coalition of companies, or an industry or sector”; and materials and communications “provided in meetings or through e-mail from lobbyists and corporations” addressing the TCJA’s international provisions.

The Treasury Department had not issued a public statement in response to the letter as of press time.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

JCT releases list of expiring tax provisions for 2020-2029

The Joint Committee on Taxation (JCT) staff on January 16 released a list of temporary federal tax provisions that are currently scheduled to expire between 2020 and 2029.

URL: https://www.jct.gov/publications.html?func=startdown&id=5240

Of the more than 90 short-term deductions, credits, and incentives identified by the JCT, 38 will expire in 2020 – a reflection of the tax deal (H.R. 1865) Congress approved last month that renewed through the end of this year several dozen provisions that expired in 2017 and 2018 or were scheduled to expire at the end of 2019. (A handful of other expired or expiring provisions were extended through 2022. For details on all the provisions extended under H.R. 1865, see Tax News & Views, Vol. 20, No. 42, Dec. 19, 2020.)

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

Another 27 provisions – mainly the tax breaks for individuals, estates, and passthrough entities that were enacted in the GOP’s 2017 tax code overhaul known informally as the Tax Cuts and Jobs Act – will sunset at the end of 2025.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP