Praise for TCJA, but little talk of budget, ‘Tax Cuts 2.0’ in Trump’s State of the Union message

Three years into his first term, President Trump used his State of the Union address to Congress February 4 to tout what he dubbed “the great American comeback,” attributing upticks in numerous economic indicators to Republican policies, including the 2017 overhaul of the tax code. The president also endorsed several specific pieces of legislation with tax implications, but he did not mention the new middle-class tax relief plan he has promised by mid-April or hint at any new tax initiatives that may be in his soon-to-be-released FY 2021 budget blueprint.

Tax talk

In extolling the nation’s unemployment rates, job growth, median household income growth, and rising wages among low-income workers, President Trump cited the “historic and record-setting tax cuts” passed during his tenure, and he specifically highlighted the creation of Opportunity Zones in the bill informally known as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97).
"Jobs and investment are pouring into 9,000 previously neglected neighborhoods thanks to Opportunity Zones, a plan spearheaded by Sen. Tim Scott [R, S.C.] as part of our great Republican tax cuts,” President Trump said in his remarks. “In other words, wealthy people and companies are pouring money into poor neighborhoods or areas that have not seen investment in many decades, creating jobs, energy, and excitement.”

**Advanceable child tax credit for new parents**: The president also praised the TCJA’s increase in the child tax credit, noting that 40 million families benefit from the credit, and he urged Congress to pass a bipartisan bill that would allow new parents to receive an advance on the credit of up to $5,000 following the birth or adoption of a child. The Advancing Support for Working Families Act (H.R. 5296, S. 2976) has bipartisan support and was discussed during a recent House Ways and Means Committee hearing on paid family and medical leave benefits, but neither Ways and Means nor the Senate Finance Committee has scheduled any action. (For prior coverage, see *Tax News & Views*, Vol. 21, No. 4, Jan. 31, 2020.)

URL: https://www.congress.gov/bill/116th-congress/senate-bill/2976/text?q=%7B%22search%22%3A%5B%22s.2976%22%5D%7D&r=1&s=1

**‘Education Freedom Scholarship’ credits**: President Trump reiterated his support for a proposal from his FY 2020 budget blueprint that would provide tax credits of up to $50 billion over 10 years to 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, after-school tutoring programs, and tuition for private schools. The president noted in his speech that 18 states have created such scholarships, and he asked Congress to pass the Republican-sponsored Education Freedom Scholarships and Opportunity Act (H.R. 1434, S. 634) which would establish a federal tax credit scholarship program. However, Democrats generally oppose the idea, which would direct money to parochial and other private schools, as do a number of Republicans who are concerned that the receipt of federal dollars would subject private schools to a slew of federal regulations from which they are currently exempt.

URL: https://www.congress.gov/bill/116th-congress/house-bill/1434/text?q=%7B%22search%22%3A%5B%22s.634%22%5D%7D&r=1&s=2

**Infrastructure**: Finally, President Trump again called for new investment in infrastructure, an area in which expectations for possible bipartisan legislative success have risen and fallen in recent years. He specifically urged Congress to approve America’s Transportation Infrastructure Act (S. 2302), a bipartisan five-year, $287 billion surface transportation authorization bill that unanimously advanced out of the Senate Environment and Public Works Committee last July.


Trump did not mention the five-year, $760 billion infrastructure framework released by House Democrats last month, even though Ways and Means Committee Chairman Richard Neal, D-Mass., has begun negotiations with Treasury Secretary Steven Mnuchin on a potential deal around how to pay for the additional spending.

Disagreements over offsets for infrastructure legislation are likely to stymie any plan in this Congress. The Senate legislation that Trump touted in his speech does not include a revenue title and the House infrastructure blueprint makes no recommendations about potential revenue or spending offsets. Decisions on revenue offsets generally fall under the jurisdiction of the House Ways and Means and Senate Finance committees and consensus among members of those two panels (and in Congress as a whole) has proven to be elusive. (For coverage of a recent Ways and Means Committee hearing on infrastructure funding, see *Tax News & Views*, Vol. 21, No. 4, Jan. 31, 2020; for past coverage of infrastructure funding discussions in the Senate, see *Tax News & Views*, Vol. 20, No. 26, Aug. 2, 2019.)

URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200131_2.html

Congressional Democratic leaders and President Trump attempted to pursue an agreement on a $2 trillion infrastructure package in 2019; but that effort broke down after the president said he would refuse to work with Democrats while they continued to investigate him and his administration. (For prior coverage, see *Tax News & Views*, Vol. 20, No. 18, May 24, 2019.)

Looking ahead: FY 2021 budget blueprint, ‘Tax Cuts 2.0’

The State of the Union address did not include a preview of tax proposals in the president’s FY 2021 budget blueprint, which will be sent to Congress on February 10, and the president did not mention whether the White House intends to release a “Green Book” with detailed descriptions of those proposals. (The White House has not provided a Green Book for any of its previous budget blueprints.)

Treasury Secretary Steven Mnuchin will discuss the president’s proposed budget at a Senate Finance Committee hearing scheduled for February 12. (Mnuchin reportedly will appear at a similar hearing to be held by the House Ways and Means Committee in early March, although that hearing has not yet been officially scheduled.)

The president also offered no details about his forthcoming middle-class tax cut plan – dubbed “Tax Cuts 2.0” – which he has said will be made public around the April 15 federal tax filing deadline. However, Trump has acknowledged that the proposal will not move through Congress this year but will instead serve as a talking point for Republicans in the run-up to the November elections, with enactment possible only if the party holds the Senate and the White House and takes back the House majority. (For prior coverage, see Tax News & Views, Vol. 21, No. 3, Jan. 24, 2020.)


— Storme Sixeas
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House taxwriters to examine role of TCJA regs in the ‘disappearing corporate income tax’

An upcoming House Ways and Means Committee hearing on what the panel’s Democrats call “the disappearing corporate income tax” will examine the 2017 tax code overhaul known informally as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97) – which reduced the corporate tax rate to 21 percent – and how Treasury regulations implementing the legislation “might result in even lower taxes for large companies,” committee spokesperson Erin Hatch told reporters this week.

Hatch added that taxwriters also will examine how IRS audit rates for large corporations compare to those for low-income individuals who claim incentives such as the earned income tax credit.

The hearing is scheduled for February 11 at 10:00 a.m. As of press time, the witness list includes Jason Furman of the Harvard Kennedy School of Government (who chaired the Council of Economic Advisers during the Obama administration), Rebecca Kysar of the Fordham University School of Law, and Chye-Ching Huang of the Center on Budget and Policy Priorities. (The GOP’s witness had not been announced at press time.)

Finance Committee Democrats also looking at TCJA implementation

News of the Ways and Means Committee hearing comes just weeks after five Democrats on the Senate Finance Committee – including ranking member Ron Wyden, D-Ore. – announced that they are looking into whether the Treasury regulations implementing the TCJA’s international tax provisions were drafted 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 five 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 and legal analysis from the general
House approves disaster tax relief bill for Puerto Rico as Trump threatens veto

The House of Representatives on February 7 approved legislation – as part of a broader emergency supplemental spending measure – that would expand certain tax preferences for Puerto Rico (and other US territories) in the wake of recent earthquakes; but a promised presidential veto means the bill is unlikely to advance any further.

H.R. 5687

The Emergency Supplemental Appropriations for Disaster Relief and Puerto Rico Disaster Tax Relief Act, 2020 (H.R. 5687), which passed on a largely partisan 237-161 vote, would provide almost $4.7 billion in emergency supplemental appropriations designed primarily to help the territory rebuild earthquake-damaged infrastructure.

URL: https://www.congress.gov/bill/116th-congress/house-bill/5687/text?q=%7B%22search%22%3A%5B%22h.r.+5687%22%5D%7D&r=1&s=1

On the tax side, the bill would adjust six tax provisions with an eye toward providing tax relief to low- to middle-income workers and families and steering private investment to the island.

Specifically, the tax portion of the bill would:

- Expand the limitation on New Markets Tax Credit (section 45D) allocations by $50 million for each of the years 2020 and 2021 for “specified community development entities” that historically have made qualified investments in disaster areas or Puerto Rico.
- Increase by $50 million – for calendar year 2020 – the housing credit ceiling for Puerto Rico under the Low-Income Housing Tax Credit (section 42).
- Repeal the limitation on excise tax revenue returned to Puerto Rico (and the Virgin Islands) on distilled spirits imported into the United States from those territories. The limit on the so-called “cover over” of rum excise tax revenue under section 7652(f) is otherwise scheduled to fall from $13.25 to $10.50 per proof gallon after 2021.
- Provide an “employee retention credit” designed to encourage businesses to employ workers within qualified Puerto Rico disaster zones. Under the bill, payments by the US Treasury to Puerto Rico under this credit would be contingent upon the territory developing a plan, approved by the Secretary of the Treasury, similar in nature to a prior plan approved pursuant to the Disaster Tax Relief and Airway Extension Act of 2017 (P.L. 115-63).
- Provide a “matching amount” payment from the US Treasury to Puerto Rico designed to reimburse the territory for a portion of the cost associated with its earned income tax credit (provided Puerto Rico first reforms its earned income tax credit “in a manner designed to substantially increase workforce participation”).

The bill also would make related changes to the child tax credit and earned income tax credit that would accrue to the benefit of other US territories and possessions, including the US Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

The tax relief provisions are not offset and would increase the deficit by more than $16 billion over 10 years, according to an estimate released by the Congressional Budget Office. The House waived its pay-as-you-go budgeting rule to advance the legislation.

URL: https://www.cbo.gov/system/files/2020-02/hr5687.pdf
**Veto bait**

H.R. 5687 was introduced by House Appropriations Committee Chairwoman Nita Lowey, D-N.Y., on January 28 and was brought straight to the House floor without formal mark-ups by the Appropriations, Budget, or Ways and Means panels to which it was referred.

In a statement released on the date of introduction, Lowey hinted at the longstanding dispute between congressional Democrats and President Trump with respect to the adequacy of disaster relief funding made available to Puerto Rico.

“Our fellow Americans in Puerto Rico have urgent needs following recent earthquakes,” Lowey said. “While President Trump has finally released some of the aid Congress has already appropriated for hurricanes, more support is clearly needed.”

But the White House disputed that assessment. In a formal Statement of Administration Policy released on February 5, the administration all but guaranteed that the measure would be met with a veto should it reach the president’s desk (which itself is unlikely, as Senate Majority Leader Mitch McConnell, R-Ky., appears disinclined to bring many bills advanced by House Democrats to the Senate floor).


“This misguided bill would add $4.7 billion on top of all of the billions already allocated to Puerto Rico, ...” the statement reads. “Additionally, the creation of in excess of $15 billion in new federal subsidies through the tax code would add billions of dollars to the deficit and undermine efforts to put the Commonwealth on a path to sustained economic growth and fiscal self-sufficiency.”

— Alex Brosseau
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**Multistate Tax Alert: Employers located in a Qualified Disaster Zone may be eligible for federal disaster relief tax credits**

Congress late last year approved and President Trump signed into law the Further Consolidated Appropriations Act, 2020 (H.R. 1865) which includes a 2018 and 2019 employee retention credit for employers affected by qualified disasters.

URL: [https://www.congress.gov/116/bills/hr1865/BILLS-116hr1865enr.pdf](https://www.congress.gov/116/bills/hr1865/BILLS-116hr1865enr.pdf)

The credit may be worth up to $2,400 per eligible employee for qualified wages paid or incurred by an eligible employer. Qualified wages include wages paid or incurred during the time the employer’s trade or business located in a Qualified Disaster Zone was inoperable due to a disaster (up to 150 days after the disaster).

Find out more

This tax alert from Deloitte Tax LLP’s Multistate Tax Group provides information about eligibility for this credit.


— Michael DeHoff
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**Deloitte Tax Alert: OECD’s Inclusive Framework renews commitment to addressing tax challenges of digital economy**

Officials from the Organisation for Economic Co-operation and Development (OECD) released a statement on January 31 that affirmed the commitment of the 138-member Inclusive Framework to reach consensus by the end of 2020 on
revised international tax rules that address the impact of the digital economy while deferring a decision on Treasury Secretary Mnuchin’s December 2019 proposal for a “safe harbor” approach to a new regime until there is agreement on other elements of the solution.


**Find out more**

A tax alert from Deloitte Tax LLP offers a detailed look at the statement – including issues where there are significant differences of opinion that need to be resolved – and briefly discusses the OECD’s next steps and projected timeline for releasing a final report.

**URL:** [http://newsletters.usdbriefs.com/2020/Tax/TNV/200207_5_suppA.pdf](http://newsletters.usdbriefs.com/2020/Tax/TNV/200207_5_suppA.pdf)

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