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Trump administration unveils fiscal 2021 budget package

Using some optimistic economic assumptions and policy recommendations, President Trump this week sent Congress a $4.8 trillion budget proposal for fiscal year 2021 that envisions declining budget deficits – and eventual balance by 2035, five years beyond the 10-year budget window – even as it assumes a $1.4 trillion extension of provisions in the 2017 tax code overhaul (known informally as the Tax Cuts and Jobs Act or TCJA) that are scheduled to sunset after 2025.

Ambitious fiscal goals and some optimistic assumptions

At a high level, Trump’s budget, which was released on February 10, sees deficits peaking at almost $1.1 trillion in fiscal year 2020 (that is, the current fiscal year that ends on September 30) and then staging a steady descent over the next decade, falling to only $261 billion in fiscal 2030. That 2030 deficit would be just 0.7 percent of gross domestic product (GDP), far below the average deficit of 3.0 percent of GDP registered over the past 50 years.
Because deficits as a share of GDP late in the budget window would be smaller than the projected rate of economic
growth, the plan also anticipates that the federal debt held by the public (that is, debt not held in intragovernmental
accounts such as the Social Security and Medicare trust funds) would decline steadily after peaking at 81 percent of
GDP in fiscal year 2022. By 2030, the publicly held debt, at 66.1 percent of GDP, would be smaller than it is today (at
about 80 percent of the economy).

But Trump’s blueprint has come in for heavy criticism from some budget watchers and virtually all Democratic
lawmakers for its ambitious assumptions about economic growth and for some of its policy recommendations,
particularly with respect to the plan’s proposed annual appropriations levels for nondefense accounts and a placeholder
for $845 billion in largely unspecified health reforms that Democrats fear would inevitably have to come out of
Medicaid and Affordable Care Act subsidies.

The plan also recommends significant savings many other programs often championed by congressional Democrats,
including Social Security Disability Insurance, Supplemental Security Income, and retirement and health benefits for
federal employees, though the administration was quick to point out those savings would not be derived by reducing
beneﬁts to program enrollees.

Senate Finance Committee ranking member Ron Wyden, D-Ore., came out forcefully against the administration’s tax
and spending blueprint.

“For a president who makes himself out to be a champion of typical working Americans, Donald Trump has run the
same old Republican playbook of giving tax handouts to the wealthy and slashing the safety net that supports
everybody else,” Wyden said in a statement released by his office on February 10.

**Appropriations levels for next year contradict recent bipartisan law:** On nondefense appropriations, the budget
proposes spending roughly $45 billion less in fiscal year 2021 than the Bipartisan Budget Act of 2019 (H.R. 3877) –
which was signed into law by President Trump last August – would allow. That “sequester-relief” bill – the final in a
string of four similar measures since 2013 – raised the statutory caps on discretionary spending put in place by the
Budget Control Act of 2011 for fiscal years 2020 and 2021. (For details on H.R. 3877, see Tax News & Views, Vol. 20,
No. 25, July 26, 2019.)

**URL:** http://newsletters.usdbriefs.com/2019/Tax/TNV/190726_1.html

Over the course of the next decade, the budget proposal calls for ratcheting down nondefense appropriations even
further, generating more than $1.5 trillion in savings.

Even Senate Majority Leader Mitch McConnell, R-Ky., usually an ally of the president on fiscal policy matters, admitted
that the proposed nondefense cuts were not likely to happen, particularly in upcoming fiscal year 2021.

“Among the things we’ll be looking at is trying once again to have a relatively regular appropriations process as we’ve
agreed on what the caps are supposed to be for this year,” McConnell told reporters on February 11. “So we’ve got the
caps deal in place, we negotiated it last year, it’s good for the second year, and we’ll comply with that.”

**Robust economic growth:** On the economy, the budget plan assumes real GDP growth of 2.8 percent this year, 3.1
percent in 2021, and then a sustained growth rate of between 2.8 and 3.0 percent for the remainder of the decade.
Over the 10-year budget window, real GDP growth would average 2.9 percent.

That is far above the nonpartisan Congressional Budget Office’s (CBO) most recent economic projections released in
January which peg real GDP growth at 2.2 percent this year and 1.9 percent in 2021. Over the same 10-year span,
CBO predicts real GDP growth will average 1.7 percent – more than a full percentage point below the Trump
administration’s projection. CBO’s numbers are generally in line with the private sector Blue Chip Economic Indicators.
(For prior coverage of the CBO’s economic outlook for 2020-2030, see Tax News & Views, Vol. 21, No. 4, Jan. 31,
2020.)

**URL:** https://newsletters.usdbriefs.com/2020/Tax/TNV/200131_6.html

That extra assumed economic growth has feedback effects on budget levels, including anticipated revenue. In fact,
despite the plan’s assumption (with its baseline revenue figures) that those tax provisions in the Tax Cuts and Jobs Act
affecting individuals, estates, and passthrough entities that are scheduled to lapse after 2025 are instead made
permanent – at a cost of $1.4 trillion within the budget window – the blueprint still predicts that revenues will bounce
back to 17.6 percent of GDP by the end of the decade, a level that would exceed the 50-year average revenue level of 17.4 percent of GDP. (The blueprint also projects that spending will fall from 21.6 percent of GDP in 2020 to 18.4 percent of GDP by the end of the decade, compared to the 50-year average of 20.4 percent.)

While it is not uncommon for an administration of either political party to assume its policies will be good for economic growth, some policymakers took issue with the extent to which this particular budget did so.

House Budget Committee Chairman John Yarmuth, D-Ky., made his concerns clear during a February 12 hearing with the Office of Management and Budget’s Acting Director, Russell Vought.

Yarmuth argued that the budget plan “extends expiring provisions of the 2017 GOP tax law adding more than $1 trillion to the debt – a reality the president was unable to hide even with his fantasy growth projections.”

**Tax proposals at a glance**

As already noted, the budget’s baseline revenue figures – that is, that plan’s revenue levels before adjustment for explicit budget policy – assume that the temporary TCJA tax relief for individuals, estates, and passthrough businesses will be made permanent.

The FY 2021 budget otherwise includes a handful of discrete tax proposals – most of which are carried over from previous years – and does not call for sweeping changes to federal tax laws.

For the fourth consecutive year, the administration did not publish a separate “Green Book” with detailed descriptions of its tax proposals. Notable supplemental materials released in conjunction with the budget include the Analytical Perspectives report (providing condensed descriptions of tax and spending proposals, plus economic and accounting analyses related to federal receipts and collections, borrowing, spending, and debt), the Appendix (details on proposed appropriations for federal departments and agencies), and a volume entitled Major Savings and Reforms (descriptions of mandatory savings proposals and proposed reductions and eliminations in major discretionary programs).

**Alternative energy incentives:** Like it did last year, the budget blueprint calls for repealing several alternative energy tax incentives including:

- The qualified plug-in electric drive motor vehicle credit (section 30D);
- Accelerated depreciation for renewable energy property (section 168) (although qualifying property would remain eligible for the bonus depreciation allowance included in the TCJA);
- The energy investment credit (section 48);
- The credit for residential energy-efficient property (section 25D); and the
- Income exclusion for utility conservation subsidies (section 136).

These proposals are unlikely to be embraced by congressional Democrats. House Democratic taxwriters last November released a discussion draft of legislation that, among other things, would expand the electric vehicle program; provide long-term extensions of temporary tax incentives to promote energy efficiency, renewable energy, and a reduction in carbon emissions; and implement new provisions to encourage the development and use of green energy technologies. (For details of the GREEN Act, see Tax News & Views, Vol. 20, No. 38, Nov. 22, 2019.) Ways and Means Committee Chairman Richard Neal, D-Mass., has indicated that the panel will mark up that proposal in the coming weeks.

Across the Capitol, meanwhile, 27 Senate Democrats – including Minority Leader Charles Schumer of New York, as well as Finance Committee ranking member Ron Wyden and a dozen other taxwriters – sent a letter to Finance Committee Chairman Charles Grassley, R-Iowa, February 11 urging him to “swiftly schedule” a hearing on alternative energy issues. The letter notes that while current “federal tax incentives, complementary state policies, and declining
costs have helped nearly double the amount of electricity produced from renewables over the past decade,” these efforts are “insufficient” to put the US on a path to addressing climate change.

URL: https://www.finance.senate.gov/imo/media/doc/021120%20Senate%20Democrats%20energy%20tax%20letter%20to%20Grassley.pdf

“Gaps in the tax code have disadvantaged complementary technologies that could improve climate resiliency and provide additional emissions reductions,” the senators wrote.

According to the letter, 69 senators – Republicans as well as Democrats – have sponsored or co-sponsored some three dozen proposals that “run the gamut of energy policy, covering electricity, renewable fuels, energy efficiency, fossil fuels, transportation infrastructure, heavy industry, carbon capture, and agriculture.”

But Grassley contended in a February 12 response that his attempts to hold a committee mark-up during 2019 of legislation to address expired and expiring tax provisions – including alternative energy incentives – were rebuffed by Democrats who insisted on also expanding the electric vehicle credit. Negotiations to include a package of alternative energy extenders in the year-end tax deal enacted last December likewise “were held hostage to the expansion of the [electric vehicle] credit,” he said.


**Education Freedom Scholarships:** The White House blueprint includes a proposal carried over from last year – and touted in the president’s recent State of the Union address to Congress – 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. The scholarships would help cover the cost of things such as career and technical dual-enrollment programs, after-school tutoring programs, and tuition for private and parochial schools. A taxpayer who donates to one of these organizations and claims the tax credit would not be allowed to also claim that donation as an itemized charitable deduction.

The Republican-sponsored Education Freedom Scholarships and Opportunity Act has been introduced in the House (H.R. 1434) and the Senate (S. 634) but there has been no indication that it will be taken up by taxwriters in either chamber. Democrats generally have opposed the idea, arguing it would use the tax code to subsidize private and religious schools, and even some Republicans have expressed concern that directing federal money to private schools could subject them 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%5B%22h.r.+1434%5D%7D&r=1&s=2

**Health care-related proposals:** The president’s budget includes proposals to expand access to tax-preferred health savings accounts (HSAs) and medical savings accounts (MSAs) by:

- Allowing Medicare-eligible individuals who are still working and have a high-deductible health plan through an employer to contribute to an HSA and
- Allowing Medicare beneficiaries enrolled in Medicare MSA plans to contribute to their MSAs beginning in 2022 (subject to limits to be determined by the IRS).

The budget blueprint also would allow health care workers who receive funds for qualified tuition and related expenses under the Indian Health Service Professions Scholarship Program, NURSE Corps, and the Native Hawaiian scholarship and loan repayment programs to exclude those amounts from income in return for satisfying a service requirement. It also would allow a similar exclusion for loan amounts forgiven under the Indian Health Service Loan Repayment Program and NURSE Corps.

**IRS budget and taxpayer compliance proposals:** The administration calls for $12 billion in base funding for the Internal Revenue Service, up from the $11.5 billion for fiscal year 2020 that was included in the spending legislation (H.R. 1158) that Congress approved and President Trump signed into law late last year.

URL: https://www.congress.gov/bill/116th-congress/house-bill/1158/text?q=%7B%22search%22%3A%5B%5B%22h.r.+1158%5D%7D&r=1&s=1
Here’s how the administration’s request breaks down across the Service’s four program areas:

- Taxpayer Services – $2.56 billion (up from $2.51 enacted in FY 2020);
- Enforcement – $5.07 billion ($5.01 billion in FY 2020);
- Operations Support – $4.1 billion ($3.81 billion in FY 2020);

On top of the base funding, the blueprint calls for a separate discretionary “program integrity cap adjustment” that would boost tax enforcement funding by an additional $400 million in FY 2021 and more than $15 billion over the 10-year budget window. The administration contends that plowing the extra funds into expanding and improving the Service’s enforcement programs will generate an additional $64 billion (net) in increased revenues from 2021-2030.

The blueprint also includes specific compliance and enforcement proposals, consistent with prior budget packages, to:

- Explicitly provide that the Secretary of the Treasury has authority to regulate all paid tax return preparers;
- Expand the IRS’s authority to address correctable errors on tax returns to include instances in which a taxpayer has (1) provided information that does not match the information in government databases, (2) exceeded the lifetime limit for claiming a particular deduction or credit, or (3) failed to include with his or her return certain documentation that is required by statute;
- Modify worker classification and information reporting requirements by (1) creating a safe harbor allowing a business to declare certain service providers as independent contractors and requiring withholding of individual income taxes at a rate of 5 percent on the first $20,000 of payments, (2) raising the reporting threshold for payments to all independent contractors from $600 to $1,000, and (3) reducing the reporting threshold for third-party settlement organizations from $20,000 and 200 transactions per payee to $1,000 without regard to the number of transactions; and
- Require a Social Security number that is valid for work for taxpayers to claim the child tax credit and the earned income tax credit. For both credits, the requirement would apply to taxpayers, spouses, and all qualifying children. (This requirement already applies for the earned income tax credit, but the proposal would “fix an administrative gap to strengthen enforcement of the provision.”)

The bulk of these provisions, which the administration estimates would reduce the deficit by a combined $20.5 billion (net) over 10 years, are carried over from previous budget packages.

Swift congressional action unlikely

With control of Congress split between Democrats and Republicans and top-line spending numbers already in place for FY 2021 as a result of last year’s Bipartisan Budget Act, neither chamber is expected to take up a budget resolution ahead of the nonbinding deadline of April 15 and the administration’s budget plan appears unlikely to move forward.

— Alex Brosseau and Michael DeHoff
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**TCJA and related Treasury regs dominate Finance Committee budget hearing**

At a February 12 Senate Finance Committee hearing convened ostensibly to discuss proposals in President Trump’s FY 2021 budget proposal, it was actually the 2017 Tax Cuts and Jobs Act (TCJA, P.L. 115-97) and the regulations implementing many of its provisions that commanded the most attention, with much of the debate falling predictably along party lines.

Finance Committee Republicans agreed with Treasury Secretary Steven Mnuchin, the sole invited witness, that the president’s “economic freedom agenda” – a combination of “tax cuts, regulatory reform, and better trade deals” is paying off through lower unemployment rates and increased take-home pay for workers and “will result in economic growth that will reduce our national debt and deficits over time.”
In an exchange with Chairman Charles Grassley, R-Iowa, Mnuchin said the administration stands by its belief the TCJA’s tax cuts will pay for themselves over 10 years and that permanently extending the tax relief for individuals, estates, and passthrough entities (which is assumed in the budget baseline) will further boost consumer confidence and continue to fuel economic growth.

But Democrats on the panel challenged those assessments and pressed Mnuchin to explain the apparent discrepancy between his economic outlook and the far less optimistic 10-year projections from the Congressional Budget Office (CBO) indicating that deficits are expected to reach $1 trillion in 2020 and will climb even higher without action from Congress. (For prior coverage of the CBO’s economic outlook for 2020-2030, see Tax News & Views, Vol. 21, No. 4, Jan. 31, 2020.)

Finance Committee member Ben Cardin, D-Md., for example, argued that the administration is putting forward “unrealistic growth numbers” and noted that while the Office of Management and Budget had projected 3.2 percent economic growth for 2019, CBO projected 2.4 percent – much closer to the actual level of 2.3 percent.

Mnuchin attributed the difference to “significant outside issues dragging down economic growth.” And in an exchange with Democratic taxwriter Tom Carper of Delaware, Mnuchin contended that the projected rise in deficits is fueled by an increase in spending, not the TCJA’s tax cuts.

More tax relief through TCJA regs?

Republicans and Democrats also sparred over Democratic claims that the Treasury Department has taken an overly expansive approach to drafting regulations implementing the TCJA’s corporate tax provisions and, in essence, has given large multinational taxpayers additional tax relief beyond what is provided in the statute.

Wyden takes aim at GILTI regs: Ranking member Ron Wyden, D-Ore., criticized what he called “loopholes” in the TCJA regs and touted legislation he introduced with Democratic taxwriter Sherrod Brown of Ohio that would address the high-tax exception in proposed regulations implementing the TCJA’s global intangible low-taxed income (GILTI) provisions.

The Blocking New Corporate Tax Giveaways Act, which Wyden and Brown unveiled on February 12, would clarify that high-taxed amounts are excluded from tested income for purposes of determining GILTI income only if such amounts would be foreign base company income or insurance income.

With Republicans in control of the Senate, the measure is likely to serve as a Democratic talking point in 2020 but is unlikely to be the subject of legislative action.

Grassley rejects ‘unfounded’ Democratic claims: In his opening statement, Finance Chairman Grassley pre-emptively dismissed Democratic claims as “unfounded” and noted that Treasury drafted the TCJA regulations following “the same process set out in the Administrative Procedures Act that has occurred after enactment of other tax legislation, like the Affordable Care Act.”

Mnuchin, for his part, told taxwriters that regulations implementing the TCJA were issued following a public notice-and-comment period and were drafted in a way that is consistent with legislative intent.

(This issue was also discussed at a February 11 House Ways and Means Committee hearing on what the panel’s Democrats have dubbed “the disappearing corporate income tax.” See separate coverage in this edition for details.)
Other issues

Mnuchin agreed with comments from Louisiana Republican Sen. Bill Cassidy that the electric vehicle tax credit primarily benefits wealthier taxpayers. And in response to a question from Cassidy about a report from the Treasury Inspector General for Tax Administration (TIGTA) that found high rates of improperly claimed electric vehicle credits, Mnuchin said Treasury is working with the IRS to strengthen its audit program in this area. (For prior coverage of the TIGTA report and a request from Finance Committee Republicans for information about how the IRS administers the credit, see Tax News and Views, Vol. 21, No. 4, Jan. 31, 2020.)

URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200131_4.html

Mnuchin told taxwriters that regulations on the section 45 carbon sequestration credit will be released within the next few weeks.

In an exchange with taxwriter Pat Toomey, R-Pa., Mnuchin said that Treasury supports a technical correction to the TCJA that would clarify the cost recovery period for qualified improvement property, calling it “our number one request to get a congressional fix for”; but he reiterated that the drafting error cannot be addressed through regulatory action and will require a legislative fix.

Mnuchin also told Toomey that the administration is “actively working” with the Organisation for Economic Co-operation and Development (OECD) on an agreement to revise international tax rules to reflect the rise of the digital economy. He noted that the US has reached a “truce” with France over that country’s efforts to impose a unilateral digital services tax (DST) and commented that the UK will not collect its own DST while the OECD pursues the multilateral pact.

Responding to several lawmakers who asked about cryptocurrency transactions, Mnuchin said Treasury will be issuing new regulations aimed at providing greater transparency and preventing money laundering.

Ways and Means budget hearing coming up

Mnuchin will return to Capitol Hill in the coming weeks to discuss the budget with the House Ways and Means Committee. That hearing has not yet been officially scheduled but is expected to take place in early March.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

Ways and Means members trade partisan jabs over economic impact of TCJA

House taxwriters engaged in a new round of sparring over the 2017 tax bill known informally as the Tax Cuts and Jobs Act (TCJA) at a February 11 Ways and Means Committee hearing on what the Democrats dubbed the “disappearing corporate income tax.”

Finger-pointing over the deficit

The hearing came shortly after the Congressional Budget Office (CBO) released its latest forecast showing rising deficits and tax revenue that has increased at a slower rate than spending in the past two years, despite a period of sustained economic growth. (For prior coverage of the CBO’s economic outlook for 2020-2030, see Tax News & Views, Vol. 21, No. 4, Jan. 31, 2020.)


However, while Ways and Means Democrats pointed to the TCJA, including its cut in the corporate tax rate – from 35 percent to 21 percent – as a reason for the worsening deficit situation, many of the Republicans argued that federal spending – and particularly mandatory spending – is the cause.

“We don’t have a revenue problem,” said Rep. Mike Kelly, R-Penn. “We have a spending problem.”
"The CBO projects the budget deficit rise is entirely from Social Security and Medicare over the next decades," said Rep. David Schweikert, R-Ariz. "Is that Republican or Democrat? It’s just demographics. We’re just getting old."

Corporate rate too low?

Although a number of Democrats noted that they supported some decrease in the prior-law corporate tax rate of 35 percent in the run-up to passage of the TCJA, they roundly criticized the enacted rate of 21 percent rate as too low. (Democrats have often cited the 28 percent rate proposed by then-President Obama as more appropriate.)

But Republicans contended that the new corporate rate was necessary to ensure US competitiveness in a period when countries around the world have reduced their own rates. Ways and Means ranking member Kevin Brady, R-Texas, noted that six more nations have lowered their rates since the TCJA was enacted.

Several of the committee’s Democrats cited the fact that the US collects a lower percentage of gross domestic product (GDP) from the corporate income tax than all but one country – Latvia – in the Organisation for Economic Co-operation and Development (OECD); GOP members countered by arguing that the US is unique in that a majority of its businesses are organized as passthrough entities and therefore pay tax through the individual side of the code.

The power of the regulators

Democrats also argued that the deficit impact of the TCJA is likely to be exacerbated by the Treasury regulations that implement its provisions.

"The law was jammed through Congress, leaving much to be done by regulation," Ways and Means Chairman Richard Neal, D-Mass., said in his opening statement. "And, unfortunately, Treasury gave away the store by issuing regulations that give even more tax breaks to corporations and that are likely to further increase the deficit."

One witness before the committee, law professor Rebecca Kysar of Fordham University, highlighted the high-tax exception included in the regulations implementing the tax on global intangible low-taxed income (GILTI), an exemption for some foreign banks from the base erosion and anti-abuse tax (BEAT), and certain provisions in the Opportunity Zone regulations as key examples of Treasury’s taxpayer-favorable rules that “will further erode the US tax base.”

In her prepared testimony, Kysar attributed Treasury’s taxpayer-friendly interpretation of some TCJA provisions to “taxpayers with resources” who were able to “exercise significant influence over the regulatory process.”

"Before the ink was dry on the TCJA, business actors and representatives swarmed Treasury to advocate for their interests. Treasury officials reportedly met with lobbyists for companies and industries roughly ten times a week. At crucial turns, Treasury acquiesced to their demands, sometimes in contravention of clear statutory language,” Kysar argued.

In an exchange with Brady, however, American Action Forum President Doug Holtz-Eakin (who previously headed the CBO) contended that it is “normal” for stakeholders to meet with Treasury during the regulatory drafting process and that the department has “an obligation” to hear from them.

Rep. Adrian Smith, R-Neb., commented that “Treasury should first and foremost be implementing legislative intent, and when we enacted TCJA, our intent was to prevent targeting income solely into tax havens, and Treasury got that right.”

(A similar debate played out during a February 12 Senate Finance Committee hearing on President Trump’s fiscal year 2021 budget proposal. See separate coverage in this issue for details.)

Battle of statistics

Members of both parties wielded familiar economic metrics to bolster their arguments about the TCJA – providing perspectives from “parallel universes,” as Rep. Jody Arrington, R-Texas, characterized it – with Republicans citing low unemployment rates, wage growth, repatriation of overseas corporate income, and an end to corporate inversions and
Democrats pointing to increased share buybacks, higher budget deficits, and lower GDP growth and capital investment than GOP forecasts.

Asked about the reason behind lower-than-expected corporate investment growth, Jason Furman, a Harvard economics professor and Council of Economic Advisers chair under President Obama, argued that the effective corporate tax rate (which reflects the impact of tax deductions, credits, and incentives) was already “on the low side” before the TCJA was enacted, minimizing the change in profitable investment options under the new law.

Members including Reps. Bill Pascrell, D-N.J, and Judy Chu, D-Calif., also criticized corporations for buying back stock in the wake of TCJA instead of making capital investments, increasing employee pay, or passing savings on to customers. That prompted Furman to comment that “[t]here’s no major American corporation whose investment is limited by the amount of money it has on hand. Most of the major corporations have significant amounts of cash they can use to finance investment and also have ready access to capital markets. So, if you give those corporations more cash, it’s not going to lead them to invest more because the cash had nothing to do with why they weren’t investing before. You need a stronger economy, better-educated workers, better infrastructure – all the things that justify increased investment.”

**Low corporate audit rate**

Democrats also decried the IRS’s low corporate audit rate and said the agency’s resources have been "severely depleted" at a time when the new law demands the ability to do complex audits. According to testimony from committee witness Chye-Ching Huang of the Center on Budget and Policy Priorities, the IRS’s enforcement budget declined 24 percent between 2010 and 2018, the number of enforcement personnel fell 31 percent, and the audit rate for corporations with $1 billion or more in assets and for large passthrough entities plunged by 51 percent and 44 percent, respectively. The Trump administration proposed IRS funding of $12 billion in this week’s FY 2021 budget request, an increase of more than 4 percent from FY 2020. (See related story in this issue for more on the White House budget proposal.)

“IRS funding pays for itself many times over,” said Huang, adding that rebuilding the agency will require a multi-year commitment and certainty so that new auditors can be hired, trained and directed towards the areas in which enforcement has dropped off most steeply. The CBO has estimated that adding $20 billion to the IRS enforcement budget over 10 years would generate more than $55 billion in revenue.

**A different approach?**

In a report released on the eve of the Ways and Means hearing, the Joint Committee on Taxation staff looked at potential behavioral responses to federal income tax law changes and reviewed the corporate tax receipts of 50 (unnamed) large C corporations. The report stated that “TCJA gave rise to behavioral incentives for taxpayers to defer income to a later taxable year, or to accelerate deductions, if possible” and said corporate tax receipts declined by a third from 2017 to 2018 before rebounding 25 percent from 2018 to 2019 (though this calendar year comparison does not precisely align with corporations’ tax liabilities in their tax years).

URL: [https://www.jct.gov/publications.html?func=startdown&id=5245](https://www.jct.gov/publications.html?func=startdown&id=5245)

Kysar argued that the incentives to shift deductions into the higher-tax year (2017) and defer income into the lower-tax year (2018) – common tax planning strategies when there is a rate change – could have been minimized using “certain phase-ins” that would have meant more corporate tax revenue for the US.

Furman also advocated a number of changes to the law that he said would increase tax revenue and boost economic growth, including raising the corporate rate to 28 percent; making business expensing permanent while disallowing interest deductions; and expanding the research and experimentation tax credit.

“I don’t think this Congress should return to the corporate tax law that was present in 2017,” Furman testified. “I think it should move forward.”

— Storme Sixeas
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House taxwriters approve information reporting requirement for certain investors in medical care providers

The House Ways and Means Committee on February 12 approved by voice vote legislation that would require investors that meet certain ownership and control thresholds to electronically file separate annual information returns with the Internal Revenue Service with respect to certain specified medical care providers in which they hold an interest.

Overview

Under the Transparency in Health Care Investments Act (H.R. 5825), an investor would be considered a "reporting person" and therefore subject to the information reporting requirement if three requirements are met: URL: https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/AINS%20transparency%20Leg%20Text.pdf

- Must directly hold an interest in a specified medical care provider;
- Must control the specified medical service provider (which applies to the reporting person or a person related to the reporting person), and
- Must receive or hold an applicable partnership interest (as defined in section 1061) with respect to an applicable trade or business (which applies to the reporting person or a person related to the reporting person). For purposes of the proposal, the definition of "specified asset" under section 1061 is replaced with "expanded specified asset," which includes securities, commodities, certain real estate, cash, cash equivalents, certain options, and certain derivative contracts and all partnership interests, regardless of the assets held by the partnership and regardless of whether the partnership is publicly traded.

An investor who is a reporting person would be required to provide information related to gross receipts, acquisitions and dispositions, real estate, and payments to related persons.

The information returns would be made publicly available by the Secretary. With the exception of reasonable cause, failure to file a complete and correct annual information return would subject investors to a $5,000 penalty for each day the failure continues, with a maximum penalty of $1 million per return. Further, the Secretary would have broad regulatory authority to prescribe regulations or other guidance to carry out the purposes of the proposal, including preventing the use of intermediaries or other arrangements for a reporting person to avoid the information filing requirement.

The proposal would apply to tax returns for taxable years of specified medical service providers beginning after the date of enactment.

A detailed description of H.R. 5825 is available from the Joint Committee on Taxation staff. URL: https://www.jct.gov/publications.html?func=startdown&id=5246

Partisan debate

Debate on the measure during the mark-up generally broke along party lines. Ways and Means Committee Chairman Richard Neal, D-Mass., and the panel’s Democrats pointed to a steady rise in investments by private equity firms in facilities such as emergency departments, ambulatory surgery centers, trauma units, nursing homes and hospitals, and health insurance companies. These transactions often are highly leveraged and that debt is sometimes shifted to the medical care providers, which can put them in financial distress or even lead to bankruptcy, Democrats argued. Requiring private equity firms to report information about their investments, they said, would promote transparency and could function as an early warning system to alert the public financially troubled health care entities.

Ranking member Kevin Brady, R-Texas, and Republican taxwriters agreed that the growing trend toward mergers and acquisitions in the health care industry presents problems that the government needs to explore and address; but they argued that the Democratic proposal unfairly targets private equity firms – something Brady characterized as "an
unprecedented abuse of our tax code” – and that a better approach would be to examine merger and acquisition activity in the health care industry more broadly and address problems and abuses wherever they are found.

It is currently unclear whether the legislation will be brought to the House floor on its own or will instead be folded into another health care-related proposal.

**Bipartisan proposals also approved**

The panel also approved two nontax bills at the mark-up: the Helping Our Senior Population in Comfort Environments (HOSPICE) Act (H.R. 5821), which would implement greater oversight for Medicare hospice providers and the Consumer Protections Against Surprise Medical Bills Act of 2020 (H.R. 5826), which would protect patients from unexpected medical bills for out-of-network services. Both of those measures advanced with bipartisan support.

— Victoria Glover and Michael DeHoff
Tax Policy Group
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**A note on our publication schedule**

The House and Senate will be out of session from the week of February 17 for the Presidents’ Day recess. Barring any unexpected developments on the tax policy front, the next edition of *Tax News & Views* will be published the week of February 24.

— Jon Traub
Managing Principal, Tax Policy
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