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## Limited—and familiar—tax talk as Harris, Trump meet for presidential debate

Vice President Kamala Harris and former President Donald Trump this week engaged in some brief exchanges on tax policy and advanced largely familiar arguments during their first and only scheduled debate of the 2024 presidential election cycle. But the more substantive news came in the days before the two met in Philadelphia on September 10, as both candidates revealed new details about their respective tax agendas.

## Checking boxes at the debate

Responding to a question from debate moderators about the state of the US economy, Harris cited her proposals to “lift up the middle class” by providing up to \$25,000 in assistance for first-time home buyers, expanding the current-law child tax credit and creating an additional credit for parents of newborn children, and increasing the deduction for start-up business expenses to \$50,000. The proposals related to the child tax credit and assistance for first-time home buyers were part of the economic agenda she announced in Raleigh, N.C., last month. Harris rolled out her proposal for an expanded deduction for start-ups on September 4 during remarks in New Hampshire. (More on that event below.)

Former President Trump, addressing the same question, did not specifically mention the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97), the marquee tax legislation of his administration, or his plans to extend TCJA tax relief provisions affecting individuals, estates, and passthrough entities that are scheduled to expire at the end of 2025. He did, however, state that he “created one of the greatest economies in the history of our country” during his first term in office and would “do it again and even better” if elected for a second (nonconsecutive) term.

**URL:** <https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf>

Neither candidate mentioned their respective plans to eliminate federal tax on tip income for hospitality and service workers—proposals that they announced at separate campaign events in Las Vegas last month.

In an instance of mutual finger-pointing, Trump argued that the Biden-Harris administration’s economic policies have “fueled the worst inflation we’ve ever had,” while Harris countered that the former president’s plan to extend expiring TCJA provisions would result in “a tax cut for billionaires and big corporations, which will result in \$5 trillion [added] to America’s deficit.”

The two candidates also disagreed over former President Trump’s proposal to impose tariffs of up to 20 percent on imported consumer products, with even higher rates on goods coming from China. Harris called the plan a national “sales tax” that would ultimately be borne by consumers in the form of higher prices at the checkout line. Trump rejected that characterization, saying the tariffs he imposed in his first term generated “billions of dollars” for the fisc and were not inflationary. He also noted that President Biden has kept many of the Trump-era levies in place and added new ones.

“[I]f she doesn’t like them, [she and Biden] should have gone out and they should have immediately cut the tariffs, but those tariffs are there three-and-a-half years now under their administration,” Trump said.

Harris did not respond to a question about what she would do with these tariffs if she is elected.

## In New Hampshire, Harris touts proposals for capital gains, start-ups

As already noted, Vice President Harris used a September 4 campaign speech in North Hampton, N.H., to unveil a proposal to expand the current-law deduction for start-up business expenditures. She also took the opportunity to announce a new proposal to increase the top rate on long-term capital gain income.

**URL:** <https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/09/04/remarks-by-vice-president-harris-at-a-campaign-event-north-hampton-nh/>

**Capital gains taxation:** In her remarks, Harris called for increasing the tax rate on long-term capital gains to 28 percent (from 20 percent under current law) for taxpayers with income greater than \$1 million. That proposed rate, in conjunction with a proposal in the FY 2025 Biden-Harris budget blueprint to increase the current-law net investment income tax (NIIT) rate to 5 percent (from 3.8 percent), would push the maximum combined rate on long-term capital gain income to 33 percent (from 23.8 percent).

Although Harris's proposal, if enacted, would mean a significant increase in the top capital gains rate compared to current law, it is less stringent than the proposed capital gain regime in the FY 2025 Biden-Harris budget blueprint. That plan would raise the top rate on long-term capital gain income to 39.6 percent for taxpayers with income greater than \$1 million, which, when coupled with the administration's proposed 5 percent NIIT rate, would result in a top combined rate of 44.6 percent.

Harris told the New Hampshire audience that her proposal would "make our tax code more fair, while also prioritizing investment and innovation."

"Billionaires and big corporations must pay their fair share in taxes," she said. "And while we ensure that the wealthy and big corporations pay their fair share, we will tax capital gains at a rate that rewards investment in America's innovators, founders, and small businesses."

**Deduction for start-up costs:** Also at the New Hampshire event, the vice president framed her proposal to increase the deduction for business start-up expenditures to \$50,000 (from \$5,000 under current law) as part of a larger plan to "see 25 million new small-business applications by the end of my first term."

". . . [O]n average, it costs about \$40,000 to start a new business in America. That is a great financial barrier for a lot of folks, and it can hold entrepreneurs back," Harris said. "And the current tax deduction for a start-up is just \$5,000. . . . Not everyone has access to that kind of wealth and capital. So, part of my plan is we will expand the tax deduction for start-ups to \$50,000. It's essentially a tax cut for starting a small business."

**Other policy details:** One day earlier, the Harris campaign unveiled a new policy page on its website outlining her agenda on tax and other priorities. On tax specifically, the campaign states that Harris and her running mate, Gov. Tim Walz of Minnesota, "are committed to ensuring no one earning less than \$400,000 a year will pay more in taxes. . . . They will ensure the wealthiest Americans and the largest corporations pay their fair share, so we can take action to build up the middle class while reducing the deficit." According to the campaign, "[t]his includes rolling back Trump's tax cuts for the wealthiest Americans, enacting a billionaire minimum tax, quadrupling the tax on stock buybacks, and other reforms to ensure the very wealthy are

playing by the same rules as the middle class.” These proposals largely track with those in the Green Book that accompanied the Biden-Harris administration’s proposed budget for FY 2025 and with planks in the Democratic platform for 2024 that the party officially adopted at its convention in Chicago last month.

[URL: https://kamalaharris.com/issues/](https://kamalaharris.com/issues/)

[URL: https://home.treasury.gov/system/files/131/General-Explanations-FY2025.pdf](https://home.treasury.gov/system/files/131/General-Explanations-FY2025.pdf)

[URL: https://democrats.org/wp-content/uploads/2024/08/FINAL-MASTER-PLATFORM.pdf](https://democrats.org/wp-content/uploads/2024/08/FINAL-MASTER-PLATFORM.pdf)

The campaign also reiterates in general terms many previously stated pledges from Harris to expand the child tax credit (including by creating a new credit for parents of newborns), expand the earned income tax credit, eliminate taxes on tips for service and hospitality workers, and provide assistance to first-time home buyers.

### **In New York, Trump floats corporate tax rate cut for domestic manufacturers**

Former President Trump, meanwhile, added some new details around his own tax plans ahead of this week’s debate, telling members of the Economic Club of New York on September 5 that he intends to reduce the corporate tax rate to 15 percent “solely for companies that make their products in America.”

Trump indicated that the proposal is intended to spur domestic production, adding that “[i]f you outsource, offshore, or replace American workers, you’re not eligible for any of these benefits. In fact, you will pay a very substantial tariff when a product comes in from another country.”

“Our message is simple: make your product here in America. Only in America,” he said,

The former president did not offer additional details about how this proposal would work.

The Tax Cuts and Jobs Act permanently reduced the corporate tax rate to 21 percent (from 35 percent under prior law). In recent months, Trump has discussed the possibility of cutting that rate to 20 percent or even 15 percent but offered no additional specifics until his September 5 speech. (Vice President Harris has called for increasing the corporate tax rate to 28 percent, marking a shift from her position as a presidential candidate in 2019, when she proposed a rate of 35 percent.)

**Reiterating support for TCJA tax cuts:** The former president told his audience in New York that he supports “permanently” extending the TCJA’s tax cuts for individuals, passthrough entities, and estates that are due to expire at the end of next year.

He also voiced support for reversing certain taxpayer-unfavorable changes that were phased-in under the TCJA, stating that his tax plan “calls for expanded R&D tax credits [and] 100 percent bonus depreciation.”

Under the TCJA, the 100 percent rate for bonus depreciation was phased down in increments of 20 percentage points beginning in 2023. (A 60 percent rate is in effect for 2024, but will be reduced to 40 percent for 2025, 20 percent for 2026, and zero for property placed in service after December 31, 2026.) The TCJA also provides that R&D expenditures paid or incurred in taxable years beginning after December 31, 2021, are subject to capitalization over 5 years for research conducted within the US and 15 years for research conducted outside

the US. There is bipartisan interest among lawmakers for restoring 100 percent bonus depreciation and the immediate deduction of domestic R&D expenses; however, legislation from House Ways and Means Committee Chairman Jason Smith, R-Mo., and Senate Finance Committee Chairman Ron Wyden, D-Ore., that would address those and other items, including an expanded child tax credit, is currently stalled on Capitol Hill. The Tax Relief for American Families and Workers Act (H.R. 7024) passed the House in January but failed to clear a procedural hurdle in the Senate on August 1 and is unlikely to be taken up again before this November's elections. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 26, Aug. 2, 2024.)

[URL: https://www.congress.gov/bill/118th-congress/house-bill/7024/text](https://www.congress.gov/bill/118th-congress/house-bill/7024/text)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240802\\_1.html](https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240802_1.html)

Trump did not address a TCJA provision that generally requires adjusted taxable income for purposes of the 30 percent limitation on deductions of net business interest expense to be calculated based on earnings before interest and taxes beginning in 2022. Language reversing that provision and permitting adjusted taxable income to be calculated based on earnings before interest, taxes, depreciation, depletion, and amortization was also included in the stalled Smith-Wyden tax package.

Trump endorsed “expensing for new manufacturing investments” in his remarks, but he provided no additional details on that proposal.

**Tax exemption for overtime pay:** A week after he spoke at the Economic Club of New York, Trump stated, without elaborating, at a campaign event in Tucson, Ariz., on September 12 that his administration would “end all taxes on overtime.” The former president already has called for eliminating federal taxes on tip income and Social Security benefits.

### **New Deloitte report looks at upcoming tax policy challenges**

No matter which party prevails in this November's elections, the next president and the next Congress will face a massive fiscal cliff in 2025 resulting from the pending expiration of a host of temporary TCJA tax provisions and increasingly dire projections regarding federal debt and deficit levels. *Approaching the cliff: Tax policy and the 2024 elections*, a new report from Deloitte Tax LLP, discusses the emerging tax policy positions of both presidential candidates and their implications for the fiscal challenges ahead.

[URL: https://www2.deloitte.com/us/en/pages/tax/articles/harris-trump-tax-policy.html](https://www2.deloitte.com/us/en/pages/tax/articles/harris-trump-tax-policy.html)

— Michael DeHoff  
Tax Policy Group  
Deloitte Tax LLP

## Treasury and IRS release proposed corporate alternative AMT regs, additional penalty relief guidance

Treasury and the IRS released proposed regulations (REG-112129-23) on September 12 which provide guidance on the application of the corporate alternative minimum tax (CAMT). The government also released Notice 2024-66, extending the waiver of penalty relief for any underpayment of estimated tax attributable to a corporation's CAMT liability with respect to a taxable year that begins after December 31, 2023, and before January 1, 2025.

**URL:** <https://www.federalregister.gov/documents/2024/09/13/2024-20089/corporate-alternative-minimum-tax-applicable-after-2022>

**URL:** <https://www.irs.gov/pub/irs-drop/n-24-66.pdf>

The proposed regulations were published in the Federal Register on September 13, 2024.

### Proposed regulations

Very generally, the proposed regulations provide definitions and general rules for determining and identifying applicable financial statement income (AFSI). The guidance also addresses a variety of topics with respect to adjustments to AFSI, including, among others:

- Mismatch between applicable financial statement year and taxable year;
- Partner's distributive share of partnership AFSI and other partnership transactions (for example, contributions of built-in gain property to partnerships and subsequent distributions, sales of partnership interests);
- AFSI, CAMT basis, and CAMT retained earnings resulting from certain corporate transactions, including corporate reorganizations;
- Foreign corporations' effectively connected income and special rules for controlled foreign corporations;
- Owners of disregarded entities or branches, tax-exempt entities, and financially troubled companies;
- Section 168 property, including special rules for section 168 property held by a partnership and section 481(a) adjustments with respect to section 168 property;
- Mark to market for hedging transactions;
- Related-party transactions; and
- CAMT avoidance transactions.

The proposed regulations make permanent a simplified method for a corporation to determine its applicable corporation status and provide relief for an applicable corporation to test out of its applicable corporation status.

In general, the proposed regulations are proposed to apply to taxable years ending after the date of publication in the Federal Register (for example, 2024 tax year for calendar year taxpayers), with certain

sections proposed to apply to taxable years ending after the date of publication of final regulations in the Federal Register. Special applicability dates apply in the case of tax consolidated groups.

In addition, a taxpayer may generally rely on all or portions of the proposed regulations for any taxable year ending on or before the date of publication in the Federal Register, if the taxpayer and its test group, as defined in the proposed regulations, follow the proposed regulations (or the portion) in their entirety in that taxable year and each subsequent year. Additional reliance rules are provided for interim previously released guidance, for example, Notices 2023-7 and 2023-64.

### **Notice 2024-66**

Notice 2024-66 waives the penalty for a corporation's underpayment of estimated tax with respect to its CAMT liability for a taxable year that begins after December 31, 2023, and before January 1, 2025.

Additional details on the notice are available in a new alert from Deloitte Tax LLP.

**URL:** <https://www.taxathand.com/article/35879/United-States/2024/Notice-provides-relief-for-underpayment-of-estimated-income-tax-attributable-to-CAMT>

### **More details to come**

A more detailed look at the new proposed CAMT regulations is forthcoming.

— Michael DeHoff  
Tax Policy Group  
Deloitte Tax LLP

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## **House approves measure narrowing eligibility for clean vehicle credit**

The House of Representatives on September 12 approved by a largely party-line vote of 217-192 a Republican-sponsored bill intended to narrow the scope of new vehicles that qualify for the clean vehicle tax credit under section 30D that was enacted in the Inflation Reduction Act. (P.L. 117-169).

**URL:** <https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf>

Seven Democrats joined 210 Republicans in approving the End Chinese Dominance of Electric Vehicles in America Act (H.R. 7980: text; Joint Committee on Taxation staff description). No GOP lawmakers were in the "nay" column.

**URL:** <https://gop-waysandmeans.house.gov/wp-content/uploads/2024/04/H.R.-7980-Bill-Text.pdf>

**URL:** <https://www.jct.gov/publications/2024/jcx-11-24/>

## End Chinese Dominance of Electric Vehicles in America Act

The House-approved measure, which was sponsored by Ways and Means Committee Republican Carol Miller of West Virginia, would address what Miller has described as “key loopholes” in Treasury Department rules outlining eligibility for the tax credit for new clean vehicles—commonly known as electric vehicles, or EVs.

**URL:** <https://miller.house.gov/media/press-releases/miller-introduces-end-chinese-dominance-electric-vehicles-america-act-2024>

According to the JCT’s description of current law, “[v]ehicles with any applicable critical minerals in the battery that are extracted, processed, or recycled by a foreign entity of concern that are placed in service after December 31, 2024, or vehicles with any components contained in the battery of the vehicle that are manufactured or assembled by a foreign entity of concern that are placed in service after December 31, 2023, do not qualify for the credit.”

Miller’s bill, according to the JCT, would broaden that restriction by denying the credit to “vehicles that have any components contained in the drive battery or any material contained in such components that are extracted, processed, recycled, manufactured, or assembled by a prohibited foreign entity.” A “prohibited foreign entity” would include foreign entities of concern, as well as certain specified individuals, businesses, and corporate officers with ties to those entities. The JCT staff estimates that the bill would raise \$660 million over 10 years.

When the measure was marked up in the Ways and Means Committee in April, Miller stated that she was seeking to align Treasury’s definition of the term “foreign entity of concern”—which GOP taxwriters have characterized as “China-favorable”—with the definition used by the Commerce Department and that her proposal would have the effect of preventing those who may have unofficial ties to the Chinese Communist Party or other hostile governments from claiming the EV credit.

It is unclear if the House-approved measure will be taken up in the Democratic-controlled Senate.

The Biden administration, for its part, expressed its opposition to H.R. 7980 in a statement of administration policy released on September 11, although it did not threaten a veto. The White House argued, among other things, that the bill “would add new, unclear, and unworkable restrictions to the Inflation Reduction Act’s section 30D tax credit” and that it “is unnecessary in light of existing authorities and strong implementing rules.” The statement also contended that the measure “would disrupt the market[;] threaten the more than \$175 billion in investments made to date in the US electric vehicle, battery component, and critical minerals supply chains[;] raise prices for consumers[;] slow the shift of vehicle and battery supply chains away from foreign entities of concern in covered nations including China[;] and undermine US national security.”

**URL:** <https://www.whitehouse.gov/wp-content/uploads/2024/09/SAP-HR7980.pdf>

**Other EV-related measures in the wings:** House Republican taxwriters also have queued up two other measures aimed at narrowing provisions in the current EV regulations that they say cede too much of the US’s EV market to China and other foreign entities of concern.



The Stop Executive Overreach on Trade Agreements Act (H.R. 7983: text; JCT description) which is sponsored by taxwriter Michelle Fischbach, R-Minn., and was approved by the Ways and Means Committee along party lines in April (along with the just-passed House bill) would ensure that vehicles meeting the critical minerals requirement for the EV tax credit—which accounts for \$3,750 of the maximum credit amount of \$7,500—could include only such minerals from countries with which the US has a comprehensive trade agreement that has been ratified by Congress. It also would define a “free trade agreement” as it applies to the EV tax credit as “an international agreement approved by Congress that eliminates duties and other restrictive regulations of commerce on substantially all the trade” between the US and one or more other countries. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 15, April 19, 2024.)

[URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2024/04/H.R.-7983-bill-text.pdf](https://gop-waysandmeans.house.gov/wp-content/uploads/2024/04/H.R.-7983-bill-text.pdf)

[URL: https://www.jct.gov/publications/2024/jcx-10-24/](https://www.jct.gov/publications/2024/jcx-10-24/)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240419\\_4.html](https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240419_4.html)

A broader proposal, a resolution of disapproval (H.J.Res.148: text; JCT description; Ways and Means Committee summary) sponsored by West Virginia’s Carol Miller and approved by House taxwriters on a party-line vote in July, would, if cleared by both chambers and signed into law by President Biden, invalidate final regulations from the Treasury Department and Internal Revenue Service implementing the EV tax credit. It was introduced under the Congressional Review Act, which allows Congress to review and disapprove certain rules issued by federal agencies. The Congressional Review Act process also provides that a disapproval resolution requires only a simple majority vote for passage in the Senate rather than the three-fifths supermajority typically needed to overcome procedural hurdles in that chamber. If a disapproval resolution reaches the White House and gains the president’s signature, the underlying rule is treated as though it had never taken effect and cannot be reissued in substantially the same form unless specifically authorized in a subsequent law. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 24, July 12, 2024.)

[URL: https://waysandmeans.house.gov/wp-content/uploads/2024/07/H.J.-Res.-148-Text.pdf](https://waysandmeans.house.gov/wp-content/uploads/2024/07/H.J.-Res.-148-Text.pdf)

[URL: https://www.jct.gov/publications/2024/jcx-30-24/](https://www.jct.gov/publications/2024/jcx-30-24/)

[URL: https://waysandmeans.house.gov/wp-content/uploads/2024/07/HJ-Res-148-One-Pager.pdf](https://waysandmeans.house.gov/wp-content/uploads/2024/07/HJ-Res-148-One-Pager.pdf)

[URL: https://www.federalregister.gov/public-inspection/2024-09094/clean-vehicle-credits-transfer-of-credits-critical-minerals-and-battery-components-and-foreign](https://www.federalregister.gov/public-inspection/2024-09094/clean-vehicle-credits-transfer-of-credits-critical-minerals-and-battery-components-and-foreign)

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240712\\_1.html](https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240712_1.html)

House Republican leaders have not yet announced plans for holding votes on either measure. Assuming the two proposals did clear the House, they likely would stall in the Senate. It’s worth noting, though, that the Senate companion version of the resolution to rescind the EV regulations (S.J.Res.87) was introduced by Energy Committee Chairman Joe Manchin of West Virginia, who recently switched his party affiliation from Democratic to Independent but still receives his committee assignments from the Democratic majority, and its roster of co-sponsors includes Finance Committee Democrat Sherrod Brown of Ohio.

[URL: https://www.congress.gov/bill/118th-congress/senate-joint-resolution/87/text](https://www.congress.gov/bill/118th-congress/senate-joint-resolution/87/text)

## Ways and Means OKs measures on 1099 reporting, charitable donations

In other House developments, the Ways and Means Committee this week approved almost entirely along party lines several GOP-sponsored bills that address 1099 reporting by third-party settlement organizations, the tax treatment of certain charitable donations, and other assorted tax issues.

**1099 reporting thresholds:** The Saving Gig Economy Taxpayers Act (H.R. 190: text; JCT description), sponsored by West Virginia GOP taxwriter Carol Miller, would repeal the more stringent thresholds that trigger Form 1099-K reporting (\$600 in transactions with no floor on the number of annual transactions) that were imposed on third-party settlement organizations under the American Rescue Plan (P.L. 117-2) in 2021 and return them to their prior levels (a \$20,000 transaction floor and at least 200 transactions annually).

[URL: https://waysandmeans.house.gov/wp-content/uploads/2024/09/AINS-to-H.R.-190.pdf](https://waysandmeans.house.gov/wp-content/uploads/2024/09/AINS-to-H.R.-190.pdf)

[URL: https://www.jct.gov/publications/2024/jcx-39-24/](https://www.jct.gov/publications/2024/jcx-39-24/)

[URL: https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf](https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf)

The current-law thresholds were originally scheduled to take effect for calendar years after 2021, but their implementation has been delayed as a result of two rounds of administrative relief (Notice 2023-10 and Notice 2023-74) from the Treasury Department and IRS.

[URL: https://www.irs.gov/pub/irs-drop/n-2023-10.pdf](https://www.irs.gov/pub/irs-drop/n-2023-10.pdf)

[URL: https://www.irs.gov/pub/irs-drop/n-23-74.pdf](https://www.irs.gov/pub/irs-drop/n-23-74.pdf)

Miller's bill, which cleared the panel by a vote of 22-16, would be effective for returns for calendar years beginning after December 31, 2021. The JCT staff estimates the proposal would reduce federal receipts by \$10 billion over 10 years.

Ways and Means Committee ranking member Richard Neal, D-Mass., said at the mark-up that Democrats were open to relaxing the thresholds enacted in the American Rescue Plan, but that reverting to prior-law levels was "irresponsible" and would "expand the tax gap even further."

Democratic taxwriter Dan Kildee of Michigan called for setting the threshold at \$5,000 as he proposed in legislation (H.R. 3530) that he has sponsored with Rep. Chris Pappas, D-N.H.

[URL: https://www.congress.gov/bill/118th-congress/house-bill/3530/text](https://www.congress.gov/bill/118th-congress/house-bill/3530/text)

**Charitable contributions:** Two other measures approved on party-line votes at the mark-up would create new incentives for contributions to certain tax-exempt organizations that promote workforce development and apprenticeship programs and organizations that provide scholarships for elementary and secondary education.

The USA Workforce Investment Act (H.R. 9461: text; JCT description), sponsored by GOP taxwriter Lloyd Smucker of Pennsylvania, would create a nonrefundable income tax credit for taxpayer contributions to a nonprofit workforce development or apprenticeship training organization. The credit allowed for a taxable year would be capped at the lesser of 25 percent of the taxpayer's tax liability and \$150,000. A volume cap of \$5 billion would apply for each of tax years 2025 through 2028 and would be reduced to zero for tax years after 2028. Certain eligibility limitations also would apply. The proposal would be effective for taxable years

beginning after December 31, 2024, and was approved by a margin of 22-15 (JCT estimated 10-year revenue loss: \$12.9 billion). Democrats, such as taxwriters Lloyd Doggett of Texas and Linda Sanchez of California, generally agreed with the intent of the legislation but questioned its proposed standards for what constitutes a qualified workforce development or apprenticeship training organization. According to Doggett, the measure as drafted would provide a credit for contributions to “get-rich, quick operations that are fly-by-night” but “discriminate against the best programs.”

[URL: https://waysandmeans.house.gov/wp-content/uploads/2024/09/H.R.-9461-Bill-Text.pdf](https://waysandmeans.house.gov/wp-content/uploads/2024/09/H.R.-9461-Bill-Text.pdf)

[URL: https://www.jct.gov/publications/2024/jcx-40-24/](https://www.jct.gov/publications/2024/jcx-40-24/)

The Educational Choice for Children Act (H.R. 9462: text; JCT description), introduced by Ways and Means Committee member Adrian Smith, R-Neb., would provide tax credits (subject to a volume cap of \$5 billion per year) for individuals and businesses that contribute to tax-exempt “scholarship granting organizations” that fund scholarship awards for private education expenses at elementary and secondary schools. The credit amount for a taxable year would be limited to the greater of 10 percent of a taxpayer’s aggregate gross income or \$5,000. The proposal generally would be effective upon enactment and passed by a vote of 23-16 (JCT estimated 10-year revenue loss: \$19.8 billion). Ranking member Richard Neal argued that the measure would “[divert] funds from the public school system,” and allow the federal government to create a system to fund private schools, “using the tax code as a conduit.”

[URL: https://waysandmeans.house.gov/wp-content/uploads/2024/09/H.R.-9462-Bill-Text.pdf](https://waysandmeans.house.gov/wp-content/uploads/2024/09/H.R.-9462-Bill-Text.pdf)

[URL: https://www.jct.gov/publications/2024/jcx-41-24/](https://www.jct.gov/publications/2024/jcx-41-24/)

**Other proposals:** Other tax-related proposals approved at this week’s mark-up would:

- Extend due dates for certain federal tax matters for hostages and individuals wrongfully detained abroad by providing that the period of detention is disregarded in determining deadlines, interest, and penalties, similar to the rules applicable to a person deployed in a combat zone (generally effective for taxable years ending after the date of enactment). The Stop Terror Financing and Tax Penalties on American Hostages Act (H.R. 9495: text, JCT description) also would terminate the tax-exempt status of designated terrorist-supporting organizations, effective for designations made after the date of enactment in taxable years ending after that date (JCT estimated 10-year revenue loss: negligible). The proposal was approved on a unanimous vote of 38-0, making it the only measure at the mark-up to win significant bipartisan support.

[URL: https://waysandmeans.house.gov/wp-content/uploads/2024/09/H.R.-9495-Bill-Text.pdf](https://waysandmeans.house.gov/wp-content/uploads/2024/09/H.R.-9495-Bill-Text.pdf)

[URL: https://www.jct.gov/publications/2024/jcx-37-24/](https://www.jct.gov/publications/2024/jcx-37-24/)

- Exempt less-than-lethal projectile devices or less-than-lethal shells or cartridges designed for use in a less-than-lethal projectile device from the firearms and ammunition excise tax as well as from certain nontax provisions in the National Firearms Act. The Law Enforcement Innovate to De-Escalate Act (H.R. 3269: text; JCT description) generally would be effective upon enactment (JCT estimated 10-year revenue loss: less than \$500,000). It was approved by a vote of 21-15.

[URL: https://waysandmeans.house.gov/wp-content/uploads/2024/09/H.R.-3269-Bill-Text.pdf](https://waysandmeans.house.gov/wp-content/uploads/2024/09/H.R.-3269-Bill-Text.pdf)

[URL: https://www.jct.gov/publications/2024/jcx-38-24/](https://www.jct.gov/publications/2024/jcx-38-24/)

## Changes to Ways and Means Democratic roster

Also this week, House Minority Leader Hakeem Jeffries, D-N.Y., announced that Rep. Steven Horsford, D-Nev., has rejoined the Ways and Means Committee to fill the vacancy created by the recent death of long-time Democratic taxwriter Bill Pascrell of New Jersey.

Horsford was originally appointed to the panel in 2019 after Democrats won the House majority in the 2018 midterm elections; however, he lost that post in 2023 after the Republicans reclaimed the House in the 2022 midterms and several Democratic committee slots were eliminated to reflect the new party ratios in the chamber. Democrats Jimmy Gomez of California, and Stacey Plaskett of the US Virgin Islands also were removed from the committee in 2023 as part of that process. Gomez returned to the panel earlier this year to replace Rep. Brian Higgins, D-N.Y., who resigned from Congress on February 2.

In a related development, Ways and Means Committee ranking member Richard Neal announced that California Democratic taxwriter Linda Sanchez has assumed Pascrell's role as ranking member of the panel's Oversight Subcommittee for the remainder of the 118th Congress. The move makes her the first woman to serve as the top Democrat on a Ways and Means subcommittee.

**URL:** <https://democrats-waysandmeans.house.gov/media-center/press-releases/neal-celebrates-sanchez-breaking-glass-ceiling-ways-and-means-democrats>

Rep. Pascrell, who died on August 21, was first elected to Congress in 1996 and had served on Ways and Means since 2007. Ranking member Neal paid tribute to him in floor remarks delivered on September 10.

**URL:** <https://democrats-waysandmeans.house.gov/media-center/press-releases/neal-floor-remarks-commemorating-life-and-legacy-late-bill-pascrell>

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## Wyden plugs mark-to-market tax regime, knocks 199A deduction during hearing on the 2025 tax cliff

Senate Finance Committee Chairman Ron Wyden, D-Ore., this week called on Congress to adopt an annual mark-to-market regime for high-income households and also criticized the design of the section 199A deduction for certain passthrough business income.

In his opening statement at the September 12 Finance Committee hearing he convened to examine “the 2025 tax policy debate and tax-avoidance strategies,” Wyden argued that the federal tax code as currently enacted gives the wealthiest individuals, whose income typically is derived from investment gains, the flexibility to choose when—or if—they will have to pay income taxes based on when they decide to realize those gains. Lower- and middle-class taxpayers, on the other hand, have income that generally is derived from wages and

are required to pay tax as that income is earned. Moreover, Wyden noted, income from investment gains generally is taxed at more favorable rates than income from wages.

### **‘Buy, borrow, die’**

One particularly notable—and legal—example of how the tax code allows the most affluent individuals to minimize their tax bills, according to Wyden, is the so-called “buy, borrow, die” strategy in which a wealthy investor buys an asset such as a business, borrows against that asset’s appreciating and untaxed value over a period of years and then passes the asset on to their heirs at death subject to minimal taxes, or in some cases no tax at all.

“If billionaires want to avoid paying taxes forever, they buy, borrow, die,” Wyden said.

“An ultrawealthy investor uses his riches to acquire valuable assets,” Wyden continued. “He watches them appreciate, and he borrows against that value to generate cash. Then he sits on those assets, enjoys all the cash he’s pocketed, and when he dies, any tax owed on that increase in value disappears into the ledgers of history.”

Wyden cited the prevalence of the “buy, borrow, die” strategy as the basis for his criticism of a report released by the Joint Committee on Taxation staff in conjunction with the hearing that stated, among other findings, that the nation’s wealthiest individuals paid an average federal tax rate of 34 percent in 2019.

**URL:** <https://www.jct.gov/publications/2024/jcx-47-24/>

“I would just urge Americans not to be fooled here. This is the funny math you come up with when you ignore, ‘buy, borrow and die,’” Wyden said.

Republican taxwriter John Barrasso of Wyoming subsequently countered that “[w]hen you look at the data, instead of listening to the misleading rhetoric we’re hearing, it looks like high income earners shoulder a massive amount of the tax burden.”

**Mark-to-market proposals:** Although Wyden did not discuss a specific mark-to-market tax proposal at the hearing, he released a detailed white paper in 2019 proposing an annual mark-to-market regime for high-income households that would also tax resulting capital gains at ordinary rates. (For details on the white paper, see *Tax News & Views*, Vol. 20, No. 29, Sep. 13, 2019.) He also released a draft proposal for a “billionaires income tax” with a mark-to-market component in 2021.

**URL:** <https://www.finance.senate.gov/imo/media/doc/Treat%20Wealth%20Like%20Wages%20RM%20Wyden.pdf>

**URL:** [https://dhub.deloitte.com/Newsletters/Tax/2019/TNV/190913\\_2.html](https://dhub.deloitte.com/Newsletters/Tax/2019/TNV/190913_2.html)

**URL:** <https://www.finance.senate.gov/chairmans-news/wyden-unveils-billionaires-income-tax>

It is worth noting that Vice President Kamala Harris—the 2024 Democratic presidential nominee—has also confirmed her support for a broadly similar Biden administration proposal that would impose an annual 25 percent minimum tax on the unrealized gains and other income of taxpayers with wealth over \$100 million. Harris also recently said that she supports raising the total capital gains rate (inclusive of an increased, 5

percent net investment income tax rate) to 33 percent for individuals with income over \$1 million, a rate substantially lower than the 44.6 percent all-in capital gains rate proposed by President Biden for high-income taxpayers, but higher than the maximum combined rate of 23.8 percent that applies under current law. (See related coverage in this issue for additional details.)

Stepped-up basis: President Biden has also proposed eliminating so-called stepped-up basis at death—a policy which Vice President Harris has at least tacitly endorsed and is included in the Democratic platform for 2024 that the party officially adopted at its convention in Chicago last month, but which was strongly opposed by multiple GOP senators during this week’s hearing.

[URL: https://democrats.org/wp-content/uploads/2024/08/FINAL-MASTER-PLATFORM.pdf](https://democrats.org/wp-content/uploads/2024/08/FINAL-MASTER-PLATFORM.pdf)

### **Section 199A deduction**

Wyden also came out swinging against the 20 percent deduction under tax code section 199A that applies to the qualified business income of certain passthrough businesses and which was enacted under the GOP’s Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97).

[URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf](https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf)

“Congress also needs to address the passthrough loophole [President] Trump created in 2017,” Wyden said. “He claimed it was all about small businesses, but it was another bait and switch. It became another Trump policy that made the biggest winners out of high-income individuals like real estate moguls and oil and gas tycoons.”

Importantly, however, Wyden is on the record for reforming—rather than repealing—the section 199A deduction.

Indeed, in 2021, Wyden introduced the Small Business Tax Fairness Act (text, summary), which he argued would simplify and better target the deduction, while netting billions of dollars of savings in the process.

[URL: https://www.finance.senate.gov/imo/media/doc/7.19.21%20Small%20Business%20Tax%20Fairness%20Act.pdf](https://www.finance.senate.gov/imo/media/doc/7.19.21%20Small%20Business%20Tax%20Fairness%20Act.pdf)

[URL: https://www.finance.senate.gov/download/small-business-tax-fairness-act-one-pager](https://www.finance.senate.gov/download/small-business-tax-fairness-act-one-pager)

Among other changes, Wyden’s bill would eliminate the “specified trade or business” concept that partially determines eligibility for the deduction, streamline the formulas and limitations that determine the size of a qualifying taxpayer’s deduction and—to help finance these changes and raise additional revenue—phase out the deduction for individuals earning more than \$400,000. (Under the proposed phase-out schedule, taxpayers with earnings above \$500,000 would be ineligible for any 199A deduction.)

Wyden alluded to a similar legislative construct during this week’s hearing.

“[H]igh-earners don’t need the [section 199A] break,” he said, “but Democrats are going to stand by the pledge to protect those with incomes under \$400,000, including small business owners.”

## Child tax credit

A handful of Democrats at the hearing also spoke out in favor of expanding the child tax credit as part of the negotiations next year when lawmakers address the scheduled expiration of the TCJA's temporary tax relief provisions benefiting individuals, estates, and passthrough entities. Many Democrats—both in the Senate and in the House—see this policy as critical to reducing the number of children living in poverty.

Indeed, the significant, but temporary, expansions made to the child credit in 2021 as part of the American Rescue Plan (P.L. 117-2)—which increased the credit from \$2,000 per child to \$3,600 per child (\$3,000 for children aged 6 through 17), made the credit fully refundable, and allowed taxpayers to elect to receive the benefits as advanceable monthly payments rather than waiting to claim them when filing a tax return in the following year—have been estimated by Chairman Wyden and others to have cut child poverty in half.

**URL:** <https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf>

Additionally, pursuant to the TCJA, the maximum per-child credit amount is set to revert from \$2,000 to \$1,000 (that is, its pre-2018 level) after 2025.

“When I think about the results we saw [under the American Rescue Plan] and the results that we’ve seen in other countries that have similar child allowances where the work participation rates are actually higher than we have here in the United States of America because people have the money to be able to spend it on child care and stay at work . . . , it just goes to show we can make a real difference,” said Finance Committee member Michael Bennet, D-Colo. (Bennet has authored child tax credit legislation mirroring the American Rescue Plan’s changes.)

A far more modest set of child credit changes is also included in the Tax Relief for American Families and Workers Act (H.R. 7024), which Finance Committee Chairman Wyden negotiated with House Ways and Means Committee Chairman Jason Smith, R-Mo., and which passed the House by a wide bipartisan margin in January but has since been stalled in the Senate due to opposition from Finance Committee ranking Republican Mike Crapo of Idaho for, among other things, its child tax credit policy.

**URL:** <https://www.congress.gov/118/bills/hr7024/BILLS-118hr7024eh.pdf>

## Crapo lauds TCJA, argues for extension

On the other side of the dais, Republicans, including ranking member Mike Crapo—who could find himself in the chairman’s seat next year should the GOP wrest control of the Senate from Democrats in the November elections—took issue with Wyden’s view of the lack of fairness in the current tax code and instead argued in favor of extending the components of the TCJA which are slated to expire after 2025.

Unless lawmakers act, a slew of temporary changes on the individual side of the tax code put in place by the TCJA—including the law’s lower marginal rates, expanded standard deduction, itemized deduction modifications, the section 199A deduction, and estate tax changes—will sunset after 2025, leading to a roughly \$4.6 trillion net increase in revenues over the next decade, according to the latest projections by nonpartisan Congressional Budget Office.

“When it comes to 2025 tax policy, . . . those proposing all of these tax increases continue to avoid a fundamental question,” Crapo argued. “Will they allow the Tax Cuts and Jobs Act to expire, and inflict multi-trillion dollar tax hikes on the American people?”

Notwithstanding the steep price tag of extending the TCJA, however—a cost that will likely only grow even larger when the 10-year budget window shifts forward early next year—Crapo also argued in separate remarks earlier this week that other TCJA provisions that are currently part of permanent law, such as the 21 percent corporate tax rate, should also be on the table during negotiations next year.

Crapo told reporters on September 9 that he would support cutting the corporate rate to 15 percent, a proposal that former President Donald Trump has also made in his re-election bid, albeit only for domestically made goods, according to Trump’s recent statements.

“We are going to be negotiating on a lot of different moving pieces,” Crapo told *Politico*.

On the flip side, however, it’s worth recalling that House Ways and Means Committee Chairman Jason Smith stated at a legislative seminar sponsored by BakerHostetler in May that there are Republican lawmakers who believe the corporate tax rate cut in 2017 may have been too deep, and who now may be willing to consider *increasing* the rate as a viable revenue-raising option to pay for the cost of extending expiring TCJA tax relief. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 17, May 10, 2024.) Since then, one GOP Senate taxwriter—Thom Tillis of North Carolina—and one member of the ultraconservative House Freedom Caucus—Chip Roy of Texas—have publicly stated that they would be open to a corporate rate increase.

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240510\\_2.html](https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240510_2.html)

## Helmy joins Finance Committee

In other Finance Committee news, Senate Democratic leaders announced this week that newly minted Sen. George Helmy, D-N.J., who was appointed by New Jersey Gov. Phil Murphy (D) to fill the vacancy in the chamber created by the resignation of former New Jersey Sen. Robert Menendez, has also taken over Menendez’s Senate committee assignments, which include a spot on the taxwriting panel. (Helmy participated in this week’s Finance Committee hearing on tax-avoidance strategies.)

Menendez resigned from the Senate on August 20, a few weeks after being convicted on federal bribery and corruption charges. His former Senate seat is among those that are in play in the 2024 election cycle.

Helmy is not seeking re-election and will leave Capitol Hill once the 118th Congress officially adjourns in early January. Four candidates—including New Jersey Democratic House member Andy Kim—are vying to replace Menendez in the Senate this November.

It is unclear who will take Menendez’s seat on the Finance Committee for the long term. The ratio of Democratic and Republican slots on the taxwriting panel is likely to be reset in the 119th Congress based on which party controls the Senate following the upcoming congressional elections.



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## Proposed regs address dual consolidated losses, ‘disregarded payment losses,’ and check-the-box rules

The Treasury Department and the Internal Revenue Service issued proposed regulations (REG-105128-23) on August 6 addressing certain issues arising under the dual consolidated loss (DCL) rules. The proposed DCL regulations include intercompany transaction rules, revisions to the current DCL regulations, rules describing the interaction of the DCL rules and the GloBE Model Rules, new rules on disregarded payments that give rise to foreign tax deductions, and a new anti-abuse rule.

**URL:** <https://www.govinfo.gov/content/pkg/FR-2024-08-07/pdf/2024-16665.pdf>

Proposed revisions to the intercompany transaction rules affect Treas. Reg. section 1.1502-13. These rules are proposed to apply to taxable years for which the original federal income tax return is due (without extensions) after the date final regulations are published in the Federal Register; however, taxpayers may choose to apply these provisions to earlier taxable years, subject to consistency requirements.

The proposed DCL regulations’ revisions to provisions in the current DCL regulations generally are proposed to apply to taxable years ending on or after August 6, 2024.

Subject to an anti-abuse rule, the proposed DCL regulations provide that the DCL rules apply without taking into account Qualified Domestic Minimum Top-up Taxes (QDMTTs) or Top-up Taxes with respect to losses incurred in taxable years beginning before August 6, 2024.

The new disregarded payment loss rules are proposed to be effective for taxable years ending on or after August 6, 2024, to entity classification elections filed on or after August 6, 2024, and, with respect to domestic owners of other eligible entities, on or after August 6, 2025.

The new anti-abuse rule is proposed to be effective for taxable years ending on or after August 6, 2024.

### Find out more

A new alert from Deloitte Tax LLP provides details on the proposed regulations.

**URL:** <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/dttl-tax-alert-us-14-august-2024.pdf>

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