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Harris, Trump highlight plans for domestic production tax incentives

In rival campaign events this week, Vice President Kamala Harris and former President Donald Trump touted their respective proposals for tax incentives that are intended to, among other things, spur domestic production and position the US as the global manufacturing leader in the twenty-first century.

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Harris announces 'America Forward' credit

In remarks at the Economic Club of Pittsburgh on September 25, Vice President Harris, the Democratic presidential nominee, pledged that her administration would support emerging industries such as biomanufacturing, aerospace, artificial intelligence, quantum computing, Blockchain, and "clean energy innovation and manufacturing" to ensure that "the next-generation of breakthroughs from advanced batteries to geothermal, to advanced nuclear are not just invented but built here in America by American workers." She also pledged to support long-established domestic industries such as iron, steel, and agriculture, including through "tax credits for expanding good union jobs and steel and iron and manufacturing communities like here in the [Monongahela] Valley."

Although Harris did not elaborate on those comments, an 82-page policy framework outlining her economic agenda that her campaign released in conjunction with her speech describes a proposal for an "America Forward" tax credit intended to encourage "investment and job creation in key strategic industries." According to that document, the credit would be available for businesses in "critical industries of the future" as well as for "investments made in longstanding manufacturing, farming, and energy communities, especially to those who commit to retool or rebuild an existing facility." The new tax credits also would "reward companies that engage with industry, workers, unions, and communities to protect jobs, including in light of increasing automation, as well as companies that develop plans to hire existing workers at comparable wages," with "a special focus on rewarding reinvestment, retooling, and rehiring in longstanding steel and iron communities. . . ."
URL: https://kamalaharris.com/wp-content/uploads/2024/09/Policy_Book_Economic-Opportunity.pdf

The policy framework does not discuss the amount of the credit, eligibility rules, or other details regarding how the credit would operate.

Incentives for employee ownership: In her remarks, Harris also mentioned—without offering details—that she intended to propose tax code changes that would "make it easier for businesses to let workers share in their company's success." According to a separate fact sheet released by her campaign September 25, these reforms are intended to encourage companies to adopt "broad-based employee stock ownership, profit-sharing plans, and comparable arrangements" and would include "appropriate guardrails to ensure these plans benefit and protect workers."
URL: https://mailchi.mp/kamalaharris.com/a-new-way-forward-to-build-american-industrial-strength-powered-by-american-workers

Cost and offsets: The fact sheet states that the tax and nontax components of Harris's domestic production incentives plan would cost "approximately $100 billion," although it does not identify the source of that estimate or whether it covers a single year or a longer time horizon. The plan would be "paid for by a portion of the proceeds of international tax reform, which seeks to prevent a global race to the bottom and to discourage inversions, outsourcing, or international tax strategies designed by corporations to avoid paying their fair share to the United States." (Although Harris has not mentioned international tax reform in the campaign speeches she has given to date, the 2024 Democratic platform adopted at the party's national convention in August includes a plank that calls for adopting a Pillar Two-compliant global corporate minimum

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tax regime, as well as "doubl[ing] the tax rate that American multinationals pay on foreign earnings to 21 percent, and end[ing] incentives . . . that encourage companies to shift jobs and operations overseas and book profits in low-tax countries.")
URL: https://democrats.org/wp-content/uploads/2024/08/FINAL-MASTER-PLATFORM.pdf

Middle-class agenda and other familiar proposals: Much of the tax policy discussion in Harris's speech focused on pledges she made earlier in her campaign to create what she has called an "opportunity economy" intended to "grow the middle class."

Harris reiterated her proposals to make housing more affordable by providing up to $25,000 in down payment assistance for first-time home buyers and creating a new tax credit for developers who build new homes priced to attract first-time buyers. These provisions would serve a larger goal of adding 3 million units to the nation's affordable housing stock by the end of her first term, she said.

She renewed her call to reduce the expenses associated with child rearing by restoring the now-expired enhanced child tax credit that was enacted in the American Rescue Plan of 2021 (P.L. 117-2) and providing an additional benefit to parents of newborn children (from birth through age one). The American Rescue Plan increased the child tax credit amount to a maximum of $3,600, among other enhancements. Harris's proposed additional benefit for parents of newborns would push the maximum credit amount for eligible parents to $6,000.
URL: https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf

To make it easier for individuals to access capital to start a small business, Harris reiterated her support for increasing the deduction for business start-up expenses to $50,000 (from $5,000 under current law) as part of a plan to spur 25 million new business applications.

The economic policy framework from Harris's campaign reaffirms her pledge not to increase taxes on individuals with income below $400,000 ($450,000 for joint filers). It also repeats earlier statements that her administration would allow the temporary tax relief provisions in the Tax Cuts and Jobs Act (TCJA, P.L. 115-97) to expire as scheduled after 2025 for more affluent taxpayers and "implement commonsense tax reforms for corporations and the very wealthy," such as increasing the corporate tax rate to 28 percent (from 21 percent), quadrupling the current 1 percent excise tax on corporate stock buybacks, imposing a minimum tax on "billionaires," and increasing the tax rate on long-term capital gain income to 28 percent (from 20 percent under current law) for individuals earning $1 million a year or more. Harris's proposed 28 percent rate top tax rate on long-term capital gain income, in conjunction with a proposal in the fiscal year 2025 Biden-Harris budget blueprint to increase the current-law net investment income tax rate to 5 percent (from 3.8 percent currently), would, if enacted, push the maximum combined rate on long-term capital gain income to 33 percent (from 23.8 percent).
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

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Trump doubles down on 15 percent 'made in America' corporate rate

Former President Trump, meanwhile, reiterated his support for lowering the corporate tax rate to 15 percent for firms that manufacture their products in the US—a policy he would pair with steep tariffs on imports and fewer regulatory restrictions to create what he called "a manufacturing renaissance."

Trump, the Republican nominee in the 2024 presidential race, made his remarks during a campaign speech on September 24 in Savannah, Ga., that was billed as focusing on his plans to grow the economy and bolster US manufacturing.

"I will give you the lowest taxes, the lowest energy costs, the lowest regulatory burden, and free access to the best and biggest market . . . , but only if you make your product here in America. It all goes away if you don't make your product here," Trump said.

The former president put a finer point on that policy later during his speech. After noting that his first administration reduced the corporate tax rate from 35 percent to 21 percent (under the Tax Cuts and Jobs Act, his signature tax legislation) he stated that his new proposal to cut that rate to 15 percent would make the US " the most competitive [country] . . . anywhere on the planet, but only for those who make their product in the USA."

The former president's carrot of lower corporate taxes on US manufacturers in some ways harkens back to the domestic production activities deduction, which was in US law until 2017, when it was repealed it as part of the TCJA. Under Trump's vision for his second administration, this incentive (or something comparable) would return—albeit with a stick in the form of steep tariffs on imported goods and components.

"If you don't make your product in America, then you will have to pay . . . a very substantial tariff when you send your product into the United States," Trump remarked.

In one particular example, the former president called out automobiles brought into the US from plants situated in Mexico, which he said would be subject to a 100 percent tariff. (In previous remarks, Trump generally has called for tariffs ranging from 10 to 20 percent, with higher levies on imports from China.)

Trump argued that his tariff policy would bring "hundreds of billions of dollars" into the US Treasury—funds that he noted could be used to benefit the US, such as by lowering income taxes. He also denied that tariffs would drive higher inflation.

That last point, however, is not universally accepted, even by some members of Trump's own party.

"[I am] not a fan of tariffs," Senate Minority Leader Mitch McConnell, R-Ky., told reporters on the same day of Trump's speech in Georgia. "They raise the prices for American consumers."

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One of many proposed tax cuts: Trump's pitch to reduce corporate taxes on US manufacturing is just one of several new tax proposals he has announced in recent weeks, including calls to eliminate the $10,000 annual cap on the itemized deduction for state and local tax taxes (SALT) and eliminate federal taxes on Social Security benefits, tips, and overtime pay. None of these has been officially scored by the Joint Committee on Taxation staff or the Congressional Budget Office (CBO)—the two official nonpartisan scorekeepers on Capitol Hill—but various policy-focused organizations outside of the government, such as the Tax Foundation and the Committee for a Responsible Federal Budget, estimate the proposals would significantly add to what the CBO has said will be a $4.6 trillion price tag for extending all of the expired and expiring TCJA provisions. (CBO's estimate for extending the TCJA includes additional debt service costs and, importantly, also assumes a permanent continuation of the limit on SALT deductions.)

During his address in Savannah, Trump also expressed support for reinstating 100 percent bonus depreciation and expensing of research expenditures, policies which—along with relaxing a stricter limitation on the deduction for business interest expense, expanding the child tax credit, and several others—would be renewed (or in the case of the child credit, enacted) through 2025 under the Tax Relief for American Families and Workers Act (H.R. 7024), a bipartisan measure negotiated by Senate Finance Committee Chairman Ron Wyden, D-Ore., and House Ways and Means Committee Chairman Jason Smith, R-Mo., which passed the House by a wide bipartisan margin earlier this year, but has since been stalled in the Senate primarily due to continued opposition from many Republicans, including Finance Committee ranking member Mike Crapo of Idaho.
URL: https://www.congress.gov/118/bills/hr7024/BILLS-118hr7024eh.pdf

Crapo has been staunchly opposed to the bill's inclusion of a lookback provision that would allow individuals to claim the expanded portion of the child tax credit (for tax years 2024 and 2025) based on their prior-year income, arguing that the provision would disconnect the incentive from work.

— Alex Brosseau and Michael DeHoff
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Deloitte Tax examines corporate AMT proposed regulations

The Treasury Department 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) under sections 55, 56A, 59(k) and (l) that was enacted in the Inflation Reduction Act of 2022 (P.L. 117-169).
URL: https://www.taxnotes.com/research/federal/proposed-regulations/long-awaited-proposed-regs-address-corporate-amt/7l69z
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf

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The proposed regulations provide definitions and general rules for determining and identifying applicable financial statement income (AFSI). The proposed regulations also address adjustments to AFSI under section 56A and certain tax consolidated return issues.

In general, the proposed regulations are proposed to apply to taxable years ending after September 13, 2024 (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.

The preamble to the proposed regulations provides that a taxpayer may rely on the interim guidance provided in sections 3 through 7 of Notice 2023-7 (as modified and clarified by Notice 2023-64), sections 3 through 5 of Notice 2023-20, and sections 3 through 14 of Notice 2023-64, for taxable years ending on or before September 13, 2024.

Find out more

A new alert from Deloitte Tax LLP provides a detailed discussion of the proposed regulations. An appendix to the alert offers additional information on applicability dates.
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240927_2_suppA.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240927_2_suppB.pdf

— Michael DeHoff
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Short-term stopgap spending bill becomes law

The House and Senate this week approved and President Biden signed into law a "clean" continuing resolution that funds the federal government at current levels through December 20.

The Continuing Appropriations and Extensions Act, 2025 (H.R. 9747), is largely free of extraneous tax and nontax provisions, although it does include $231 million in additional funding for the US Secret Service. It cleared the House on September 25 by a vote of 341-82 under an expedited procedure known as "suspension of the rules," which allows for limited debate, no amendments, and passage upon an affirmative two-thirds vote. In all, 209 Democrats joined 132 Republicans to support the stopgap. All of the 82 "no" votes came from the GOP.
URL: https://docs.house.gov/billsthisweek/20240923/CR1FY25_xml%20-%20FINAL%20FOR%20INTRODUCTION.pdf

It was fast-tracked through the Senate later that day and was approved by a vote of 78-18, with 46 Democrats, 4 Independents who receive their committee assignments from the Democrats, and 28 Republicans aligned in

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favor of the bill and 18 Republicans opposed. (The time agreement allowing for quick Senate consideration required a 60-vote supermajority for passage.)

President Biden signed the bill a day later, thus averting the possibility of a partial shutdown of government operations when fiscal year 2025 begins on October 1.

Full-year funding package pushed to lame duck session

Passage of the continuing resolution comes as Congress struggles to complete work on the 12 appropriations bills required to fund the government for the coming fiscal year. To date, the House has approved only five of these measures and the Senate has yet to approve any.

Moreover, House Republicans and Senate Democrats continue to differ sharply on topline spending numbers for federal department and agencies. Spending bills that have cleared the Senate Appropriations Committee (but have not yet reached the Senate floor) adhere to the spending caps that President Biden and then-House Speaker Kevin McCarthy, R-Calif., agreed to in the Fiscal Responsibility Act of 2023 (P.L. 118-5), which was signed into law in June of last year and affirmed this past January in a handshake deal on government funding between current Speaker Mike Johnson, R-La., and Senate Majority Leader Charles Schumer, D-N.Y. That measure suspended the federal debt limit through January 1, 2025, and also made certain fiscal policy changes—including provisions to keep nondefense discretionary spending flat for fiscal year 2024 and to limit annual growth to 1 percent for fiscal years 2025 through 2029. Spending measures moving through the House, however, generally reflect the demands by a contingent of conservative Republicans to hold nondefense discretionary spending closer to the levels in effect for fiscal year 2022. (These members contend that the caps included in the Fiscal Responsibility Act set a ceiling for spending, but not a floor.)
URL: https://www.congress.gov/118/plaws/publ5/PLAW-118publ5.pdf

With both chambers now adjourned for a several weeks of campaigning ahead of this November's congressional and presidential elections, further work on a durable funding agreement for fiscal year 2025 is on hold until lawmakers return for a post-election lame duck session that is scheduled to begin on November 12.

White House warns against IRS budget cuts

In a statement of administration policy announcing the president's support of this week's stopgap spending measure, the White House specifically cautioned Congress that he will not accept cuts to the Internal Revenue Service's budget as part of a final fiscal year 2025 appropriations agreement.
URL: https://www.whitehouse.gov/wp-content/uploads/2024/09/H.R.-9747-Continuing-Appropriations-and-Extensions-Act-2025-Final-Updated.pdf

"[W]hile the . . . IRS has the resources it needs between now and December to continue its successful efforts to ensure that households making more than $400,000 pay the taxes they owe, the administration will oppose any cuts or restrictions on the IRS in final appropriations legislation which would limit the IRS's ability to crack down on wealthy tax cheats, and increase the deficit," the statement said. (The Biden administration and

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congressional Democrats have argued that fully funding the IRS will help the agency's ongoing efforts to enhance compliance efforts targeting large corporations, complex partnerships, and wealthy individuals to reduce the federal "tax gap"—the difference between the amount of tax legally owed to the government and the amount that is timely paid and collected.)

The Senate Appropriations Committee on August 1 approved a Financial Services and General Government funding measure that would provide the IRS a discretionary budget of $12.3 billion for fiscal year 2025—an amount that's unchanged from the current funding level, equal to the Biden administration's request for the agency in the tax-and-spending blueprint it sent to Congress in March, and consistent with the parameters of the Fiscal Responsibility Act. House appropriators, however, approved a proposal in June that would reduce the agency's discretionary funding to $10.1 billion.

— Michael DeHoff
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Three more Tax Court nominees heads to the bench

The Senate this week voted to confirm Rose Jenkins, Jeffrey Arbeit, and Benjamin Guider III to 15-year terms as judges on the US Tax Court.

Jenkins, who had been serving as an attorney in the office of the IRS Associate Chief Counsel (Procedure and Administration), was confirmed on September 23 by a vote of 69-17. She was tapped for the post by President Biden in February and her nomination cleared the Senate Finance Committee in June.

Arbeit, who served nine years as a staff lawyer at the Joint Committee on Taxation and previously clerked for a Tax Court judge, and Guider, formerly an affordable housing lawyer with Longwell Riess, were both confirmed by voice vote on September 25. Both were nominated to the court in May and vetted by the Senate Finance Committee in July.

The three now join newly minted Tax Court judges Adam Landy and Kashi Way, who were also confirmed by the Senate in July.

And then there was one . . .

With Jenkins, Arbeit, and Guider now taking the bench alongside Landy and Way, there is just one remaining nominee who, if confirmed by the Senate, would fill the last of the current vacancies on the 19-seat Tax Court.

Cathy Fung, who has worked in the IRS Office of Chief Counsel since 2009 and currently is a deputy counsel, began her legal career as an attorney-advisor at the court. She was nominated to be a judge in May and the Finance Committee advanced her nomination to the full Senate in July, along with those of Arbeit and Guider,

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although she drew 8 “no” votes from Republicans on the taxwriting panel, while Arbeit and Guider received unanimous support. (For coverage of their joint nomination hearing at the Finance Committee, see *Tax News & Views*, Vol. 25, No. 24, July 12, 2024.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240712_3.html

The Senate was unable to reach a unanimous consent agreement on Fung’s confirmation this week, which foreclosed the possibility of an expedited floor vote. And with lawmakers now adjourned for a recess until after the upcoming presidential and congressional elections, no further action is even possible until Congress returns for a lame duck legislative session, which is set to begin on November 12. If the Senate does not vote to confirm Fung before the 118th Congress officially adjourns early next year, her nomination will expire and decisions around filling the remaining Tax Court vacancy will fall to the next president and the incoming 119th Congress.

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Wyden renews call for partnership tax reform

Senate Finance Committee Chairman Ron Wyden, D-Ore., this week renewed his longstanding call for an overhaul of the tax rules for partnerships as Congress contemplates possible changes to the tax code next year in light of the scheduled expiration of significant portions of the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97).
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

Speaking at a September 25 forum on modernizing partnership taxation that was co-sponsored by the Brookings Institution and the New York University Tax Law Center, Wyden noted that lawmakers tend to be overly focused on issues such as the corporate tax rate and the top marginal tax rate for individuals and, as a result, have paid less attention to partnership issues—including the proliferation of large, complex partnerships and the “serious tax dodging” that occurs among some of these entities.

Wyden cast the issue of modernizing the tax treatment of partnerships as a matter of fairness, arguing that the wealthiest taxpayers, with the help of “armies of lawyers and accountants,” are able to use partnership structures to reduce their tax liability in ways that “the average person” cannot.

As lawmakers consider how to address the pending sunset in 2025 of temporary TCJA provisions affecting individuals, passthrough entities, and estates, they will have an opportunity to close various “loopholes” in the tax code and “bring some common sense” to the partnership tax rules,” Wyden said, adding that “it would be legislative malpractice to punt on that issue.”

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Revisiting prior proposals?

The Finance Committee chairman did not discuss specific reforms to the partnership rules at the Brookings event. It's worth noting, though, that Wyden released a discussion draft (text, Finance Committee staff summary) in 2021 of a proposal that would significantly modify the tax treatment of partnerships by, among other things:
URL: https://www.finance.senate.gov/imo/media/doc/Pass-through%20Changes%20Discussion%20Draft%20Legislative%20Text.pdf
URL: https://www.finance.senate.gov/imo/media/doc/Wyden%20Pass-through%20Reform%20Section%20by%20Section.pdf

1. Tightening the rules for allocating partnership income and losses among partners (generally requiring pro rata allocations),
2. Requiring that all debt be shared between partners in accordance with profits, subject to limited exceptions,
3. Repealing the exception from corporate tax treatment for publicly traded partnerships,
4. Requiring mandatory basis adjustments in the case of transfers and distributions, and
5. Requiring revaluations of partnership property.

Also in 2021, Wyden introduced the Small Business Tax Fairness Act (text, summary), which would reform the TCJA's 20 percent deduction for passthrough business income by, among other things, eliminating the "specified trade or business" concept that partially determines eligibility for the deduction, streamlining the formulas and limitations that determine the size of a qualifying taxpayer's deduction, and—to help finance these changes and raise additional revenue—phasing 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.)
URL: 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

Tighter rules linked to stepped-up enforcement

In his remarks at the Brookings event, Wyden also emphasized the importance of providing the Internal Revenue Service with the resources it needs to maintain robust enforcement and compliance operations, noting that some of the largest partnership entities may feel emboldened to look for ways to avoid—or even evade—tax if they perceive that the risk of a possible audit is low.

Without strong enforcement by the IRS, he said, "tax dodging becomes part of the business model."

The IRS received a special mandatory funding allocation of $80 billion (through 2032) under the Inflation Reduction Act of 2022 (P.L. 117-169) to enhance its compliance and enforcement efforts, modernize its business systems, and improve its taxpayer services operations, although that amount was trimmed by $20 billion on a bipartisan basis in the fiscal year 2024 government funding law. The Biden administration's budget blueprint for fiscal year 2025 proposes to backfill that reduction and extend the revenue stream through

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2034—a proposal the Democrats are likely to pursue next year if they win control of the White House and both chambers of Congress in this November's elections.
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf

The White House this week also emphasized the importance of fully funding the IRS's discretionary budget for fiscal year 2025 in a statement announcing its support for a stopgap spending measure that for the most part continues funding the government at current levels through December 20 and averts a shutdown of federal operations that otherwise would have occurred when fiscal year 2025 begins on October 1. (See related story in this issue for details.)

— Michael DeHoff
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Senate Finance subcommittee calls for simplification of remote sales tax collection rules

The Senate Finance Subcommittee on Fiscal Responsibility and Economic Growth this week highlighted the challenges remote sellers face in complying with varied state sales tax rules since the Supreme Court's 2018 decision in *South Dakota v. Wayfair*, which held that states could require remote sellers with no physical nexus to collect and remit sales taxes on in-state transactions. And, as they have done for a number of years, they called for simplification of the system.
URL: https://www.supremecourt.gov/opinions/17pdf/17-494_j4el.pdf

Subcommittee Chair Maggie Hassan, D-N.H., emphasized at a September 25 hearing that Congress needs to mandate that states simplify and standardize remote sales tax compliance through uniform rates, consistent product definitions, and centralized filing portals.

Witnesses from the National Taxpayers Union Foundation, the Streamlined Sales Tax Governing Board, and the Sales Tax Institute described the burdens on small businesses, including high compliance costs and disparate state definitions, and recommended that all states provide no-cost compliance services and follow the multi-state Streamlined Sales and Use Tax Agreement (SSUTA) model, which provides a central registration system, certain liability protections, and common definitions that can alleviate some of the compliance burden for companies.

Hassan has for several years advocated against out-of-state taxes on small businesses, arguing that the decision in the *Wayfair* case has forced small businesses to become "tax collectors for out-of-state governments." Ahead of the hearing, she released a discussion framework and a two-page summary of legislation that would require states to minimize the compliance burdens for small businesses, and she noted during the hearing that she intends to advocate for a law that would set higher economic nexus thresholds for

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larger states that have not adopted the SSUTA. (The summary of Hassan's discussion draft proposal notes that 24 states currently are members of the SSUTA.)
URL: https://www.hassan.senate.gov/imo/media/doc/lowering_costs_for_small_business_act_framework.pdf
URL: https://www.hassan.senate.gov/imo/media/doc/lowering_costs_for_small_businesses_act_-_one_pager.pdf

Joseph Bishop-Henchman of the National Taxpayers Union Foundation commented at the hearing that the Supreme Court essentially directed Congress to take action and that lawmakers have failed to do so in the six years since the court's decision.

The subcommittee's ranking Republican, Sen. Charles Grassley of Iowa, echoed this argument, stating that "[t]he Supreme Court . . . largely, as we are now finding out, punted the issue to the Congress." Grassley also observed that no states have joined the SSUTA since the *Wayfair* decision.

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