Tax News & Views
Capitol Hill briefing.
November 22, 2024

In this issue:

Republican congressional leaders eye 2025 tax agenda

In the second week of the post-election lame duck session, Republicans on Capitol Hill directed their attention to next year when they will hold a trifecta of power in Washington and have full control of the tax policy agenda.

A new bill in the 119th Congress

Republicans have been discussing how a new tax bill will incorporate many of President-elect Donald Trump's campaign proposals, how best to move legislation forward in the 119th Congress, and how to accomplish this while maintaining a measure of fiscal restraint.

Johnson expects early action: Speaker of the House Mike Johnson, R-La., pointed to a beginning-of-the-year tax bill, stating in a November 17 interview on CNN's State of the Union that the "top of the agenda" for Republicans is ensuring that, "early in this new Congress" Americans do not experience the "highest tax increase in US history" when key provisions in the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97) affecting individuals, estates, and passthrough entities are scheduled to expire.
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

Johnson also discussed the president-elect's campaign promise to do away with taxes on tip income, stating that "we are going to try and make that happen," although he cautioned that the challenge for Republicans will be to "do the math [and] . . . make sure that these new savings from [the] American people can be paid for and make sure the economy is a pro-growth economy."

Crapo weighs in on offsets: Also discussing a tax bill for next year was incoming Senate Finance Committee Chairman Mike Crapo, R-Idaho, who argued this week on Fox News Sunday that extending TCJA tax cuts without providing offsets should not be scored as increasing the deficit. (He noted that then-President Barack Obama agreed to forgo offsets in legislation to extend expiring George W. Bush-era tax cuts in early 2013.)

"Under our current policy, the failure to stop tax increases from happening is considered a deficit—this is a $4 trillion dollar tax increase on Americans, $2.5 trillion of it will fall on people making less than $400,000," he said.

Crapo commented that he has been making this argument to his colleagues in Congress and that there has been "quite a bit of receptivity."

Other Republicans call for fiscal restraint: It is worth noting, however, that some Republican lawmakers have expressed concern about the nation's rising debt level and about how extensions of the 2017 Trump tax cuts could be offset. (The nonpartisan Congressional Budget Office has estimated that a permanent extension of the expiring TCJA provisions would cost $4.6 trillion over 10 years.)
URL: https://www.cbo.gov/publication/60114

Discussing a possible reconciliation tax bill for next year, House Majority Leader Steve Scalise of Louisiana said that "we are going to be having a lot of discussions with President Trump about the framework. Obviously, keeping the current tax rates where they are—not having any tax increases—is the main objective," as reported by *Politico* on November 19.

But Scalise also said that "there were a lot of other items that President Trump put on the table during the campaign that we want to work with him on. So, we've got to look at the numbers, make sure everything adds up because budget reconciliation does give you some limitations."

The budget reconciliation rules under which Republicans expect to move a substantial tax package in 2025 would allow them to bypass a filibuster in the Senate, which would require a three-fifths (60-vote) supermajority to overcome, and advance a party-line bill without having to attract support from congressional

Democrats; however, the fast-track procedure also imposes certain hurdles—most notably, a requirement that a reconciliation measure cannot increase the federal deficit outside of the 10-year budget window.

Also signaling fiscal restraint, Republican House Ways and Means Committee member Darin LaHood of Illinois commented at a forum on affordable housing sponsored by *Politico* this week that it will be challenging to find ways to pay for President-elect Trump's campaign promises, including "no tax on tips, no tax on overtime, [and] no tax on Social Security [benefits]."

"Those are all going to be extremely expensive, and so this will be one of the dilemmas that we'll have to face as we push this through," he said.

Pennsylvania Republican Rep. Lloyd Smucker, who sits on the Ways and Means Committee, likewise commented that lawmakers will need to keep costs in mind as they contemplate a large-scale tax bill next year.

"The situation's different than it was in 2017" when Congress passed the TCJA, Smucker said at an event sponsored by *The Hill* this week. "We now have almost $36 trillion in debt."

Joint Economic Committee talks TCJA, fiscal discipline, economic growth

In a potential preview of how tax policy deliberations on a new bill in the next Congress may ensue, Democrats and Republicans on the Joint Economic Committee—a bicameral panel responsible for reviewing economic conditions and recommending improvements to economic policy—discussed expiring provisions in the TCJA, fiscal restraint in the context of rising federal debt, and economic growth and innovation during a November 19 hearing focused on the TCJA and the 2025 tax policy outlook.

TCJA and economic growth: Several lawmakers on the panel focused on the interplay between making the TCJA tax cuts permanent, promoting growth, and incentivizing investment, while at the same time ensuring fiscal discipline.

Rep. Nicole Malliotakis, R-N.Y., who also serves on the House Ways and Means Committee, asked witness Kevin Brady about how Congress can build on "the successes of the TCJA."

Brady, who chaired the Ways and Means Committee when the TCJA moved through Congress in 2017 and has since left Capitol Hill, maintained that "for people to expand their businesses, they need certainty." Responding to a follow-up question from Malliotakis on expanding businesses, Brady recommended that Congress "lock in those lower rates for families and small businesses," and also "expand and simplify" the 20 percent deduction for passthrough business income under section 199A.

In an exchange with Sen. Eric Schmitt, R-Mo., about the importance of extending the TCJA tax cuts to encourage growth, Brady commented that the "tax code is built for growth" and reiterated that tax rates need to be "locked in." When Schmitt asked about "the best areas to double down for expanded growth next year," Brady recommended that Congress focus on “tax rates on corporations,” asserting that they drive up paychecks. He also called for improvements to current-law research and development incentives.

House GOP Rep. Jodey Arrington of Texas, who also serves on Ways and Means and chairs the Budget Committee, which plays a key role in the reconciliation process, stated that the “fiscal health of the country is in rapid decline,” and that we “need to reduce spending and increase growth.” He asserted that not all tax cuts pay for themselves and asked Brady about the right approach to ensure fiscal restraint in crafting next year’s tax legislation.

Brady replied that you “[have] to have growth and guardrails around spending,” adding that “while all tax cuts don’t pay for themselves . . . tax reform does.”

Another witness, Douglas Holtz-Eakin of the American Action Forum, added that Congress should focus on making the TCJA tax cuts permanent, broadening the base, and reducing rates. Holtz-Eakin, who is a former director of the Congressional Budget Office, also warned against “jacking up rates on small businesses” and stressed the need to address spending.

House Republican taxwriter Lloyd Smucker focused on the interplay between possible extensions of the TCJA and the nation’s rising debt, which he characterized as “one of the greatest threats facing” the US “if we don’t change the trajectory.”

“[W]e need to get the tax code right, but we can’t add to the debt,” he said.

In an exchange with Smucker, the American Action Forum’s Douglas Holtz-Eakin said that the “gold standard” would be to “have a deficit-neutral tax reform” and reiterated that “you have to bring in the spending side of the budget.”

Section 199A passthrough deduction: Several committee members raised questions about section 199A, which was created by the TCJA and provides a 20 percent deduction for passthrough business income. At the scheduled expiration of TCJA, the deduction would be repealed and passthrough business income would be taxed at the taxpayer’s individual rate.

In response to a question from House Democratic taxwriter Don Beyer of Virginia on eliminating the passthrough deduction, witness John Arensmeyer of Small Business Majority clarified that his organization does not support repealing section 199A, but instead advocates for its reform and for benefits of the deduction to reach the smallest businesses that need assistance the most.

Rep. Gwen Moore of Wisconsin—another Ways and Means Committee Democrat—asked Arensmeyer if lawmakers should consider making reforms to 199A to enhance the impact of the tax cuts while avoiding an increase in the federal deficit. Arensmeyer asserted that “we need tax incentives, like 199A, which will level the playing field and not just toward businesses that don’t need it.” In his opening statement, he called the pending expiration of key TCJA provisions a “golden opportunity to reform 199A.”

Research and development expenses: Members on both sides of the aisle noted that, beginning in 2022, companies could no longer immediately expense their costs for research and development (R&D) expenses and must instead amortize these costs over five years for domestically conducted activities and fifteen years for those activities conducted abroad. This provision was enacted in the TCJA and codified in section 174.

Sen. Maggie Hassan of New Hampshire, who sits on the Finance Committee, indicated that the Chinese government, unlike the US, provides a "supersized" investment in R&D. The fact that US "small businesses cannot expense" these costs creates significant cash flow issues, she added.

Hassan noted that the Senate is "still trying" to pass the Tax Relief for American Families and Workers Act (H.R. 7024), a bipartisan measure negotiated by House Ways and Means Committee Chairman Jason Smith, R-Mo., and Senate Finance Committee Chairman Ron Wyden, D-Ore., that, among other provisions, would delay through 2025 mandatory capitalization of research expenditures, for domestic expenditures only, retroactive to expenses paid or incurred in tax years beginning after December 31, 2021. (The Smith-Wyden bill, which also would temporarily reverse taxpayer-unfavorable changes in the TCJA related to bonus depreciation and the deduction for business interest expenses, cleared the House earlier this year by a wide margin but subsequently stalled in the Senate. For prior coverage, see *Tax News & Views*, Vol. 25, No. 26, Aug. 2, 2024. It currently appears unlikely that Senate leaders will try to bring it up in the remaining days of the 118th Congress. See additional discussion of this bill below and elsewhere in this edition.)
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2024/01/AINS-to-H.R.-7024.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240802_1.html

Joint Economic Committee Vice Chairman—and House taxwriter—Dave Schweikert, R-Ariz., contended that Congress should make R&D expensing permanent, rather than requiring taxpayers to amortize those costs over a period of years, stating that permanent expensing would encourage businesses to buy "better and faster equipment" for their operations.

State and local tax deduction: Rep. Katie Porter, D-Calif., argued that the TCJA's $10,000 cap on the state and local tax (SALT) deduction punishes many Californians who owe more than $10,000 in state and local income and property taxes and makes it difficult for first-time homebuyers to purchase a home.

The SALT deduction cap, which generated revenue to help offset the cost of the TCJA's tax cuts and is set to expire at the end of 2025, is likely to be an issue of contention in the tax debate next year. Since its enactment, the cap has prompted criticism from lawmakers in both parties who represent jurisdictions with high local income and property taxes; however, other lawmakers on both sides of the aisle have contended that restoring the full deduction would primarily benefit upper-income taxpayers.

If the cap is extended past 2025, it could be used to offset some of the TCJA tax cuts that President-elect Trump and congressional Republicans would like to make permanent, although an extension of the cap at the current level of $10,000 is assumed as part of the Congressional Budget Office's estimated $4.6 trillion cost for a long-term renewal of the expiring provisions. The debate also took on a new level of complexity this fall when Trump declared during the campaign that he would "restore the SALT deduction, saving thousands of

dollars for residents of New York, Pennsylvania, New Jersey, and other high-cost states." (For prior coverage, see *Tax News & Views*, Vol. 25, No. 28, Sept. 20, 2024.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240920_1.html

Housing: Democratic Sen. Maggie Hassan discussed the lack of affordable housing in the US and the "drag it is having on the economy" and small business growth.

Responding to a question from Hassan about the government's role in increasing housing supply, witness Samantha Jacoby of the Center on Budget and Policy Priorities recommended that Congress consider a tax credit.

Who got left behind?: House Democratic taxwriter Don Beyer contended that the bulk of the benefits from the TCJA flowed to the wealthiest taxpayers and that even though "we have grown our middle class dramatically," less affluent taxpayers were "left behind."

Beyer acknowledged that "not everything that TCJA did was wrong" but "it did not really do what it could have done for low-income" individuals, including "lift[ing] children out of poverty." On that point, Beyer touted provisions in the now-stalled Tax Relief for American Families and Workers Act that would permit the refundable portion of the credit to be calculated on a per-child basis, gradually increase the overall limit on refundability, allow parents to use prior-year income to qualify for the credit, and index the maximum credit amount for inflation.

For her part, House Democratic taxwriter Gwen Moore commented that any wage gains that lower- and middle-class individuals have seen in recent years "have not come from the TCJA."

— Steven Grodnitzky
Tax Policy Group
Deloitte Tax LLP

Still no decisions on government funding as December 20 deadline looms

Congress closed out the second week of the post-election lame duck work period with no real signs that Republican and Democrat leaders are closer to reaching an agreement on a full package to fund federal departments and agencies for fiscal year 2025; meanwhile, the outgoing chairman of the Senate Finance Committee suggested that lawmakers may be able to clinch a deal on a disaster relief tax package before the end of the year.

Government funding

Although fiscal year 2025 began on October 1, the House and Senate have not yet approved the 12 full-year appropriations bills required to pay for government operations. To date, the House has approved only five of

these measures, the Senate has not approved any, and lawmakers passed a short-term continuing resolution in September that keeps the government operating at fiscal year 2024 levels through December 20. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 29, Sep. 27, 2024.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240927_3.html

With more work to be done and only a limited time left, some Republicans have signaled that they prefer to pass a short-term measure now that will fund the government into early 2025 and take up a spending bill for the full fiscal year when they are in control of both chambers of Congress and Donald Trump has been sworn in as president.

House Speaker Mike Johnson, R-La., noted on Fox News Sunday November 17 that, with respect to funding the government, "it's getting more and more difficult to get all of those bills done, and here's the reason why: the House has done its work, the Senate has not." Johnson also stated that Senate Majority Leader Charles Schumer, D-N.Y., "has refused to put a single appropriations bill on the floor. That's not how the process is supposed to work."

Johnson indicated that he still hopes to get a full-year funding bill completed before the end of this year, but said if that is not possible, "we'll have a temporary measure that would go into the first part of next year that would allow us the necessary time to get this done." He added that delaying a full-year funding measure until after President-elect Donald Trump takes office could work to the GOP's advantage because "you'd have Republican control, and we'd have a little more say in what those spending bills are."

Other Republicans, however, have argued that passing a full-year funding measure during the lame duck session would clear one potentially difficult item from incoming President Trump's to-do list and allow him to focus on his broader policy agenda—including laying the groundwork for a package of tax law changes—in his first 100 days in office. (See separate coverage in this issue for details on the GOP's plans for moving a significant tax package early next year.)

Disaster tax relief

While prospects for action on a fiscal year 2025 spending bill remained uncertain, Senate Finance Committee Chairman Ron Wyden, D-Ore., indicated this week that momentum appears to be building for attaching a package of disaster tax relief provisions to a $100 billion supplemental disaster-aid spending request that President Biden recently sent to Capitol Hill.

The package would provide tax relief for victims of certain federally declared disasters by:

- Extending temporary taxpayer-favorable rules for deducting certain personal casualty losses related to major federally declared disasters that were last renewed in the Consolidated Appropriations Act, 2021 (P.L. 116-260) and are now expired;
  URL: https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf

- Providing an exclusion from gross income for amounts received as qualified wildfire relief payments; and
- Treating payments received by individuals incurring damages or losses related to last year's train derailment in East Palestine, Ohio, as qualified disaster relief payments for purposes of section 139(b) and therefore excludable from gross income.

The provisions mirror those in the Tax Relief for American Families and Workers Act (H.R. 7024), a bipartisan measure negotiated that Wyden negotiated with House Ways and Means Committee Chairman Jason Smith, R-Mo., that also would temporarily expand the child tax credit and temporarily reverse certain taxpayer-unfavorable changes enacted in the Tax Cuts and Jobs Act of 2017 related to bonus depreciation, the treatment of research and development costs, and the deduction for business interest expenses. The Smith-Wyden measure was approved in the House with a large bipartisan majority early this year but has since been stalled in the Senate, primarily due to opposition from current Finance Committee ranking member Mike Crapo, R-Idaho, who will take the Finance Committee gavel early next year when Republicans assume control of the Senate in the 119th Congress.
URL: https://gop-waysandmeans.house.gov/wp-content/uploads/2024/01/AINS-to-H.R.-7024.pdf

The House approved an identical set of disaster relief provisions in a freestanding bill (H.R. 5863) this past May. At the time, however, Wyden vowed to place a "hold" on that bill in the Senate in an effort to force Republicans in that chamber to act on the broader tax package he had brokered with Ways and Means Chairman Smith; however, an August 1 procedural vote to advance the Smith-Wyden legislation in the Senate failed. (For prior coverage, see *Tax News & Views*, Vol. 25, No. 26, Aug. 2, 2024.)
URL: https://www.congress.gov/bill/118th-congress/house-bill/5863/text
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240802_1.html

Wyden's announcement this week that lawmakers hope to attach the disaster tax relief provisions to the president's supplemental spending request appears to be a tacit acknowledgment that the Smith-Wyden tax measure is essentially dead in this Congress.

House Democrats hold leadership elections

In other developments this week, House Democrats held internal elections to select their leaders for the 119th Congress, choosing Hakeem Jeffries of New York to continue in his post as House minority leader, a position he has held since 2023 after former Speaker Nancy Pelosi, D-Calif., stepped down from leadership. Along with Jeffries, the caucus re-elected Katherine Clark of Massachusetts as whip and Pete Aguilar of California as caucus chair.

Jeffries stated during a press conference after the leadership elections that House Democrats "are prepared to find bipartisan common ground on any issue, whenever and wherever possible." He also pledged his caucus "will continue to do everything we can, each and every day . . . to make life more affordable for the American people, to address the fact. . . that far too many Americans are struggling to live paycheck to paycheck, struggling to get by, and struggling to get ahead."

With the House Democratic Caucus elections now settled, the leadership rosters on Capitol Hill are almost complete. House Republicans chose current Speaker Mike Johnson as their speaker-designee for the incoming 119th Congress on November 13, and Senate Republicans elected Sen. John Thune of South Dakota as the new majority leader in the 119th Congress the same day. (For prior coverage, see *Tax News & Views*, Vol 25, No. 30, Nov. 15, 2024.) Senate Democrats are expected to hold their leadership elections during the lame duck session but have not yet announced a date, although outgoing Senate Majority Leader Charles Schumer of New York is expected to be unopposed in his bid for another term as the chamber's top Democrat.
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/241115_2.html

House and Senate headcount update

It's been more than two weeks after the nation cast its votes in the 2024 presidential and congressional elections, and although the Associated Press (AP) reported on November 13 that Republicans had won control of the House with the 218 seats required for a majority, the final party headcount in the chamber remains undetermined.

As of the morning of November 22, the AP reports that Republicans have secured 219 House seats, Democrats have won 213 seats, and 3 races remain undecided. It is worth noting that Republican taxwriter Michele Steele's race in California's 45th District is among those that have not yet been called. (She currently trails her Democratic opponent by 480 votes with 98 percent of all votes now counted.)

Also unclear is what will happen to the Florida House seat vacated by now-former GOP Rep. Matt Gaetz, who was re-elected on November 5 but resigned from the 118th Congress on November 13 shortly after President-elect Trump announced his intention to nominate him to serve as attorney general. Gaetz indicated when he submitted his resignation that he would not take the oath of office when the 119th Congress convenes on January 3, 2025. (He withdrew his name from consideration for the attorney general post on November 21.)

In the Senate, meanwhile, Democratic Senate Finance Committee member Robert Casey of Pennsylvania this week officially conceded his race to Republican challenger David McCormick following a mandatory recount that had been triggered under Pennsylvania law because of the small vote margin (0.5 percent) separating the two candidates. The final tally in the Senate remains at 53 seats for Republicans and 47 for Democrats, since the AP had called the race for McCormick ahead of the recount, but Casey's concession makes it official that there will be one more vacancy on the Finance Committee's Democratic roster when the 119th Congress convenes in January. (Democratic taxwriters Debbie Stabenow of Michigan, Thomas Carper of Delaware, Benjamin Cardin of Maryland, and George Helmy of New Jersey did not seek another term in office this year, and Sherrod Brown of Ohio, like Casey, lost his re-election bid.)

— Steven Grodnitzky and Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

Ways and Means Republicans seek stakeholder comments on Inflation Reduction Act's biofuel producer tax credits

Six Republican members of the House Ways and Means Committee released a letter on November 18 requesting comments from stakeholders on how the biofuel tax credits enacted in the Inflation Reduction Act of 2022 (P.L. 117-169) could be improved to support domestic energy production and rural economic development.
URL: https://feenstra.house.gov/sites/evo-subsites/feenstra.house.gov/files/evo-media-document/11-18-24%20WM%20Request%20for%20Information%20on%20Biofuel%20Tax%20Policy.pdf
URL: https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf

Signers on the letter include House GOP taxwriters Adrian Smith of Nebraska, Randy Feenstra of Iowa, Michelle Fischbach of Minnesota, Darin LaHood of Illinois, Carol Miller of West Virginia, and Claudia Tenney of New York.

The Inflation Reduction Act extended the prior-law biodiesel tax credit under section 40A through December 31, 2024. It also created two new temporary credits: a sustainable aviation fuel tax credit (under section 40B) available from January 1, 2023, through December 31, 2024, and a clean fuel production credit (under section 45Z), available from January 1, 2025, through December 31, 2027.

According to the six GOP taxwriters, there has been bipartisan support for modernizing biofuels credits, but issues with how the Inflation Reduction Act provisions were drafted by congressional Democrats (the measure moved under budget reconciliation rules without support from any Republicans) and how they have been implemented by the Biden-Harris administration have created problems along the supply chain.

Among other concerns, the taxwriters note that certain provisions in the credits were drafted in ways that "fail to consider American agricultural producers, taking into consideration . . . domestic value-addition but not the sourcing of inputs"; moreover, they contend, the "disparity in credit value between aviation and non-aviation fuels . . . may distort the market and supply chain for traditional biofuels."

The Republican taxwriters also argue that the Biden administration's delay in issuing guidance implementing the section 45Z credit has created "uncertainty for producers, blenders, retailers, and consumers ahead of the January 1, 2025, start date," and that even after regulations are in place, "the biofuels supply chain will enter another period of uncertainty" once the credit expires after 2027. The lack of guidance also has "created particular uncertainty for the biodiesel industry as they attempt to adapt to an emissions-based credit after years of consistently receiving a credit of known value," the taxwriters state.

The letter requests comments from stakeholders on a range of issues such as whether the section 45Z credit should be extended beyond 2027, how an extended section 45Z credit should be phased out, and what risks or benefits might arise from various possible modifications to the credit. The taxwriters also seek comments on specific issues related to sustainable aviation fuel.

Comments are due by December 13, 2024, and should be submitted on the feedback form provided by the Ways and Means Committee's Rural America and Supply Chains tax teams.
URL: https://forms.office.com/g/GVWEs9xJ4g

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP