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# Tax Legislative Impacts of Republican Sweep in 2024 Elections; What Will Happen to the Estate and Gift Tax Basic Exclusion Amount?

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**Legislative Process in 2025 for Tax Legislation Using "Reconciliation"; Possible Relatively Short Extension of Tax Cuts and the Increased Estate and Gift Tax Exclusion Amount**

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## 1. Brief Synopsis

The Republican sweep of the Presidency and majorities in the Senate and House in the 2024 elections means that many of the tax cuts in the Tax Cuts and Jobs Act of 2017 (2017 Tax Act) will almost certainly be extended past January 1, 2026 (when they would otherwise automatically be reinstated). That legislation will proceed under the "reconciliation" process so that a mere majority of Senators is required for approval. That process begins with a "budget resolution" that, among other things, must specify the amount the act can add to the deficit. Extending all the tax cuts in the 2017 Tax Act is estimated to add $4.6 trillion to the deficit over ten years (the typical budget window considered in reconciliation acts). Some members of Congress also want to eliminate or raise the $10,000 limitation on the deduction for state and local taxes (the SALT deduction), which would further significantly increase the deficit. To reduce the impact on the deficit, the act could extend the cuts over a shorter time, make fewer tax cuts, or add other offsetting revenue raisers or expenditure cuts. Congress may ultimately extend the tax cuts past January 1, 2026, but for a shorter time than ten years (perhaps even as short as two to five years).

The estate and gift tax exclusion amount will very likely stay at the increased amount of $10 million, indexed for inflation ($13,990,000 in 2025), but there can be no assurance of that. Clients who were not totally comfortable making large gifts will likely wait before making gifts (but they should consider engaging in planning, structuring trusts, etc. currently so the planning will be in place when they decide to make large gifts). Clients who have enough wealth that they are comfortable making gifts are best advised to make the gifts currently, so that future appreciation can be removed from the estate.

## 2. Extremely Brief Overview of Tax Proposals

The Republicans' primary tax focus will be to make permanent the individual and business income tax cuts and the transfer tax cuts in the 2017 Tax Act. Most of those provisions would otherwise sunset on January 1, 2026. (As discussed below, however, most of those cuts would only be extended for 10 years, or even less, because of the legislative "reconciliation" process.)

The Trump campaign has not identified its position on transfer taxes other than extending the 2017 Tax Act cuts (i.e., keeping the exclusion amount at $10 million, indexed for inflation).

The Trump campaign has also suggested additional cuts at various times including cutting the corporate income tax rate to 15% and providing income exclusions for tips for certain industries and overtime pay.

## 3. Financial Impact; Deficits

The nonpartisan Congressional Budget Office estimated (in May 2024) that extending all the 2017 Tax Act cuts would add $4.6 trillion to the deficit over ten years (2025-2034). It estimated that extending the $10 million (indexed) estate and gift tax exclusion amount for ten years would add $167 billion to the deficit and would increase net interest outlays by another $22 billion (total cost of $189 billion). *Budgetary Outcomes Under Alternative Assumptions About Spending and Revenues*, CONGRESSIONAL BUDGET OFFICE (May 2024).

Adding in other possible changes suggested by the Trump campaign, including exempting overtime pay from taxation, repealing the state and local tax deduction limitation, offset somewhat by additional broad tariffs, would add $7.5 trillion over ten years to the deficit according to the Committee for a Responsible Federal Budget. *The Fiscal Impact of the Harris and Trump Campaign Plans, US Budget Watch 2024*, COMMITTEE FOR A RESPONSIBLE FEDERAL BUDGET (Oct. 7, 2024).

Tax cuts do not pay for themselves. Deficit estimates often take into consideration the effects of economic growth resulting from tax cuts. In 2017, the Joint Committee on Taxation scored about a 30% offset from economic growth resulting from the 2017 Tax Act tax cuts, but the Tax Foundation currently estimates a more modest 16% offset from economic growth. William McBride, *Questions About Tax Cuts, Tariffs, and Reconciliation After the Election*, TAX FOUNDATION (November 13, 2024) (estimating that extending the 2017 Tax Act cuts would add about $4.25 trillion to the deficit over ten years on a conventional basis, but by about $3.59 trillion after including economic growth effects, representing a 167% offset), available at **https://taxfoundation.org/blog/trump-tax-cuts-tariffs-reconciliation/**.

Republican leaders have stated that the Congressional Budget Office underestimated by $1.5 trillion in 2017 how much revenues would grow under the 2017 Tax Act. *See* Doug Sword, *House Leans Toward Two Bills With Tax Second, Budget Chair Says*, TAX NOTES TODAY FEDERAL (Dec. 18, 2024) (statement by House Budget Committee Chair Jodey Arrington (R-Texas)). The CBO acknowledged the underestimation but blames $900 billion of the underestimate on higher than expected inflation and much of the rest on Trump tariffs that were not projected at the time. *Id*.

A recent report from the Committee for a Responsible Budget, a nonpartisan fiscal watchdog group, concludes that an extension of the 2017 Tax Act tax cuts would do little to grow the economy.

> New data from the Congressional Budget Office (CBO) finds that economic feedback may not cover *any* of the revenue loss and that TCJA extension might even add ***more to the debt on a dynamic basis, particularly over the long run,*** than under conventional scoring.
>
> … CBO finds that "the dynamic budgetary effects of [TCJA] expiration … would be very similar to the conventional estimate," as ***the positive effects of lower taxes would be counteracted by the negative effects of higher debt.***

*TCJA Extension Might Not Pay for Any of Itself*, COMMITTEE FOR A RESPONSIBLE FEDERAL BUDGET (December 10, 2024) (emphasis in original), available at **https://www.crfb.org/blogs/tcja-extension-might-not-pay-any-itself** .

Even so, some members of Congress maintain that "pay-fors" are not required for economic growth provisions (such as tax cuts).

Deficit concerns are growing. "In 2001, the U.S. federal government ran a $128 billion budget surplus and was on course to pay off the national debt by 2009." *From Riches to Rags: Causes of Fiscal Deterioration Since 2001*, COMMITTEE FOR A RESPONSIBLE FEDERAL BUDGET (January 10, 2024). The nation's debt has risen from $4.6 trillion in 2005, to $13.1 trillion in 2015 (in large part, resulting from the financial crisis of 2007-2009), to $36 trillion today. Even without any extension of the tax cuts, "the deficit for the 2025-2034 period is projected to total $22.1 trillion, $2.1 trillion more than the CBO projected in February." *An Update to the Budget and Economic Outlook*: 2024 to 2034, Congressional Budget Office (June 2024); *see* Andrew Duehren, *Trump's Agenda-Three Paths for Taxes*, NEW YORK TIMES THE MORNING (November 15, 2024). Another estimate is that the Congressional Budget Office projects that deficits will average $1.9 trillion per year over the next decade assuming the 2017 Tax Act cuts expire after 2024.

Interest payments on the national debt have grown dramatically. The nation's debt service in 2020 was $345 billion annually when the pandemic relief was being negotiated. Because of the subsequent increase in the debt and the increase in interest rates (the 10-year Treasury notes fell as low as 0.6% in April 2020 and are now at 4.4%), the net interest on the public debt grew to $950 billion in FY24 (a growth of 34% from FY 23). Interest on the public debt is now the second largest federal expenditure after Social Security (which costs $1.5 trillion), surpassing defense spending of $826 billion and Medicare spending of $869 billion. William McBride, *Another Huge Federal Deficit in Fiscal Year 2024 Despite Surging Corporate and Other Tax Collections*, TAX FOUNDATION (October 10, 2024), available at **https://taxfoundation.org/blog/federal-budget-deficit-tcja-revenue-spending/**.

Even with the "Republican trifecta," many members of Congress will be concerned about the deficit impact of extending all the 2017 Tax Act cuts for another ten years (and possibly adding other tax cuts as well).

## 4. SALT Cap Repeal

The Trump campaign has indicated that it favors repealing or increasing the $10,000 SALT cap (on the deduction for state and local taxes), and some members of Congress are very focused on repealing the cap. But the SALT cap has been a potent revenue generator from the 2017 Tax Act. Repealing the SALT cap entirely is estimated to reduce revenue by $1.2 trillion over ten years. *SALT Cap Expiration Could be Costly*, COMMITTEE FOR A RESPONSIBLE FEDERAL BUDGET (Aug. 28, 2024). A compromise, such as boosting the cap to $15,000 for individuals and $30,000 for joint filers, would reduce the revenue impact by $564 billion over ten years. *Policymakers Must Weigh the Revenue, Distributional, and Economic Trade-Offs of SALT Deduction Cap Design Options*, TAX FOUNDATION (Dec. 7, 2023).

The SALT cap could become a hotly debated issue in the 2025 legislative negotiations. While it has a large revenue impact, the very narrowly divided Senate and House means that a few Congressmen from New York, California, and other high income tax states could threaten to buck the entire reconciliation package without a concession on the SALT issue. *See* Zach Cohen, *SALT Cap Opponents Empowered in Narrow House Majority Next Year,* BLOOMBERG DAILY TAX REPORT (November 18, 2024) ("This is not 2017, this is 2025, and we're going to have a very tight margin, and there are more than enough members as part of the SALT caucus that will be able to exert influence," quoting Rep. Mike Lawler (R-NY)). House Majority Leader Steve Scalise (R-LA) points out that in 2017 Republicans had a large majority and could afford 25 defections and still advance a reconciliation bill; in 2025, the Republicans will hold a very slim majority in the House and 24 of the Republican members of the House are from the five states (California, New York, New Jersey, Illinois, and Minnesota) most affected by the $10,000 SALT deduction limitation. *See* Doug Sword, *Tax Bill Should Include Tips; SALT Solution Unclear, Scalise Says*, 185 TAX NOTES FEDERAL 2256 (Dec. 16, 2024).

### 5. Pay-Fors

In some years, Congress has adopted a "pay-for" approach, requiring that tax cuts or spending increases must be offset with other tax increases or spending cuts. Soon-to-be Senate Finance Committee Chair Mike Crapo (R-ID) takes the position that extending current tax policy does not require an offset. Furthermore, he has stated that cutting the corporate income tax rate to 15% is an economy-growing policy that does not have to be paid for (but he does not know if the proposed income exclusion for overtime pay, tips and Social Security count as economy growing). *See* Doug Sword & Cady Stanton, *Cutting Taxes is Easy: Paying for It Is Not*, 185 TAX NOTES FEDERAL 329 (Oct. 14, 2024). However, deficit hawks in the House may push for more deficit-sensitive legislation.

Offsets are touchy prior to elections. "No one leads with their offsets. Offsets are released later because they are just not attractive." Statement by Joshua Ordintz, former counsel at the Department of Treasury and the Senate Finance Committee. *Id*.

Pay-fors will likely play a big role at crunch time. Ultimately, cost estimates and analyses from the Joint Committee on Taxation will be critical in determining what provisions will be included or excluded from the legislation. Examples of pay-fors that have been mentioned include additional taxes on large endowments and municipal bonds, lowering the mortgage interest deduction, and eliminating state workarounds for the SALT cap. *Id*.

### 6. Reconciliation Legislative Process

The Senate can pass tax legislation with a mere majority under the reconciliation legislative process enacted in the Congressional Budget Act of 1974. That Act was used for the first half of its existence to *reduce* deficits; starting in 2021, it has been used to grow deficits more than half the times it has been used. *See Budget Reconciliation Should Be Used to Reduce the Debt, Not Add to It*, TAX NOTES TODAY FEDERAL (Nov. 19, 2024) (statement from Maya MacGuineas, president of the Committee for a Responsible Federal Budget).

The process begins in the House with the passage of a budget resolution that specifies a budget window (at least five, but typically ten years), the maximum amount the bill could add to deficits, and general budget instructions for each committee. The budget resolution must then be passed by the Senate.

Negotiations over the deficit amount can be difficult. The $4.6 trillion deficit estimate for a 10-year extension may be too large for many members of Congress to stomach. The budget resolution for the 2017 Tax Act stalled in the Senate for an extended time while negotiating over the deficit number. Congressional leadership had hoped to introduce a budget resolution in May or June 2017, but the House did not pass its budget resolution until October 5, 2017. A bill was introduced on November 2, 2017, and the 2017 Tax Act was enacted on December 22, 2017. (The three-seat Republican majority in the Senate in 2025 is even less than the four-seat majority the Republicans held in the Senate in 2017 when negotiations were delayed for months over the deficit number.)

Thus, one of the most difficult decisions must be made at the outset of the process in adopting a budget resolution. "This brings about an arguably backward process. The first thing House and Senate Republicans must agree on is how much their bill can add to deficits over 10 years. Then they spend that number. 'It's driven by your decision up front about what your budget number is.… You figure out what number you can live with, then you write policy that fits that number — not the other way around.'" Doug Sword, *TCJA's Extension Might Be a Short One*, TAX NOTES (November 13, 2024) (quoting Jonathan Traub of Deloitte Tax LLP).

The budget resolution can specify that a budget reconciliation bill will be considered to "reconcile" the work by various committees working on budget issues and to enforce budget resolution targets. Like the budget resolution, it cannot be filibustered in the Senate and only requires a majority vote. The reconciliation directive directs committees to produce legislation by a certain date that meets specified spending or tax targets. The various bills are packaged into a single bill (only one reconciliation act is allowed in each Congressional session). The reconciliation bill, when ultimately approved by the House and Senate, goes to the President for approval or veto.

While the reconciliation act is not subject to Senate filibuster, under the "Byrd rule" any single Senator can call a point of order against any provision or amendment that is "extraneous" to the reconciliation process for various prescribed reasons, including (1) provisions without fiscal impact or that are merely "incidental" to fiscal impact (the measure can only be for the purpose of implementing budget changes [spending and revenue provisions); for example, a provision mandating an increase of the minimum wage would not be germane to fiscal matters), (2) provisions that impact Social Security, and (3) any provision that raises deficits beyond the budget window of the reconciliation bill unless other provisions in the bill fully offset these costs.

Scoring rules for determining the fiscal impact of the reconciliation act will become a central discussion point 2025. One significant issue will be whether to use a "current law" (under which tax cuts would expire) or "current policy" baseline. Senator Michael Crapo (R-Idaho), expected to be the Senate Finance Committee Chair in 2025, urges that the cost of tax legislation should be measured against "current policy": "If you're just extending current law, we're not raising taxes or lowering taxes, that is a $4 trillion deficit. That's ridiculous." Andrew Duehren, *Republicans Ponder: What if the Trump Tax Cuts Cost Nothing?*, NEW YORK TIMES (November 25, 2024) (quoting Senator Crapo in an interview with Larry Kudlow). The Obama administration had similarly argued that extending the Bush tax cuts that were set to expire at the end of 2012 should be measured against current policy, not the "current law" under which tax cuts would expire. (The difference between these approaches in 2012 was whether the legislation was deemed to *reduce* the deficit by more than $700 billion over ten years using a current policy approach vs. the Congressional Budget Office estimate that it *increased* deficits by about $4 trillion over those ten years using a current law approach as the baseline. *Id.*)

The Center for American Progress, an independent (but left-leaning) nonpartisan policy institute, strongly argues that a current law baseline should be used and that using a current policy baseline "is a gimmick. That is a double no-count, and no program in the entire budget is officially scored that way." *Republican Tax Legislators' Potential Framework for Extending Trump's Tax Cuts Is a Gimmick That Would Cost More Than Advertised*, REPORT OF CENTER FOR AMERICAN PROGRESS (December 7, 2024).

> But the alternative current policy baseline that some Republicans have proposed—either for rhetorical purposes or for official CBO/JCT scoring and budget enforcement—would change the assumption that the Trump tax cuts that are set to expire under the law to instead assume that they will actually continue. Doing so would make it appear as if a bill extending them is free, despite the fact that an extension of the individual and estate tax cuts would cost taxpayers roughly $3.9 trillion over 10 years that has never been counted, increasing upward pressure on the debt-to-GDP ratio by 50 percent.

*Id.*

Scoring rules that apply in the reconciliation process can be surprising. For example, additional IRS funding for enforcement may increase revenues by up to 12:1 for auditing high-income earners. However, additional net revenue generated by additional IRS funding cannot be counted in reconciliation, but net revenue losses resulting from defunding the IRS are counted in reconciliation. Tax Analysts Tax Policy

Webinar (November 20, 2024) (statement by Chris Towner, policy director for the Committee for a Responsible Federal Budget).

Republicans may make an argument that their plans for deregulation, tariffs, and economy-growing tax provisions mean the bill will pay for itself despite any CBO score (but deregulation and tariffs will not be a part of the reconciliation act). *See* Doug Sword, *House Leans Toward Two Bills With Tax Second, Budget Chair Says*, TAX NOTES TODAY FEDERAL (Dec. 18, 2024).

The Senate Parliamentarian gives advice about the interpretation of Senate rules and procedures including guidance on compliance with requirements of reconciliations acts. The Parliamentarian clearly advises about what matters are "extraneous" under the Byrd rule, which includes whether a reconciliation bill extends deficits beyond the budget window, but the Parliamentarian's decision may not be decisive as to whether the budgetary impact is within the impact number specified in the budget resolution. The Parliamentarian does not determine scoring methods directly, but its interpretations can influence how provisions are assessed for budgetary impact for compliance with reconciliation instructions in the budget resolution.

One reconciliation act is allowed in each fiscal year (though two reconciliation bills have never been passed in a single year). In 2017, a FY 2017 budget resolution was introduced on January 3, 2017, to repeal various mandates, taxes and penalties associated with the Affordable Care Act (Obamacare), with the hope of enacting legislation in April or May 2017. Negotiations stalled, and that attempt failed. The plan was then to introduce a separate FY 2018 budget resolution sometime in May or June 2017, with the goal of completing the reconciliation act by August 2017, that would deal with tax reform. Similarly, no reconciliation bill has been introduced for FY 2025, so in 2025, two reconciliation acts would be possible (one for FY 2025 and one for FY 2026).

Republican leadership in the Senate and House have differed over whether to plan to pursue one or two reconciliation acts in 2025. House Ways and Mean Committee Chair Jason Smith (R-MO) prefers a single bill approach to extend expiring provisions of the 2017 Tax Act and address other tax changes and also to include provisions about securing the border and about energy. He reasons "[t]here are advantages to doing one bill and having the border as part of the sweetner to get 218" (the number of votes for a majority vote in the House). *See* Doug Sword, *Top Republicans Agree to Disagree on 2025 Tax Bill Approach*, 185 TAX NOTES FEDERAL 2253 (Dec. 16, 2024). Incoming Senate Majority Leader John Thine (R-SD) prefers a two-bill approach, with the first bill addressing border security, defense and energy and a second that would focus on taxes. *Id*. Momentum may be building among House Republicans to begin with a "skinny" reconciliation bill on border security that is fully paid for followed by a second bill dealing with taxes to extend the 2017 Tax Act cuts. *See* Doug Sword, *House Leans Toward Two Bills With Tax Second, Budget Chair Says*, TAX NOTES TODAY FEDERAL (Dec. 18, 2024).

The reconciliation process will likely begin in the early days of the Trump administration. President-Elect Trump has expressed that his top two priorities when taking office are border security and the Trump tax cuts. "We're going to be extending within that period [100 days]—or as soon as we can—the Trump tax cuts…. I think it will anger a lot of people, frankly, if we don't get an extension of that." Quoted in Alexander Rifaat, *Trump Plans to Act Fast on TCJA Extension*, 185 TAX NOTES FEDERAL 2248 (Dec. 16, 2024).

In any event, the Republicans have slim majorities in the Senate and House. But President-Elect Trump can be expected to exert significant pressure on Republicans to stay unified in their voting. House Majority Leader Steve Scalise (R-LA) summarizes it this way: "Donald Trump is the whip now. You don't have to worry about me; I'm actually a nice guy. The guy at 1600 Pennsylvania is going to send out a tweet, a truth, or whatever, and it's not going to be as nice." *See* Doug Sword, *Tax Bill Should Include Tips; SALT Solution Unclear, Scalise Says*, TAX NOTES TODAY FEDERAL (Dec. 11, 2024).

## 7. Shortened Extension to Reduce Deficit Impact

One way of dealing with the deficit impact of tax cuts is to reduce the period of the extension. The 2017 Tax Act reduced its deficit impact (to $1.5 trillion) by shortening the extension to eight years rather than the full ten years of the budget window. Three ways of reducing the bill's deficit impact are to (i) make it

shorter, (ii) make it skinnier by reducing the tax cuts, and (iii) include pay-fors. The two likely approaches in 2025 will be making it shorter and adding some pay-fors (new revenue sources, such as a state and local tax deduction limitation for corporations or an attempt to count tariffs toward a reconciliation score). *See* Doug Sword, *TCJA's Extension Might Be a Short One*, TAX NOTES (November 13, 2024).

Another factor is the political reality of the upcoming 2026 mid-term elections, when the party out of power historically has more success. In 2026, 20 Republican but only 13 Democratic senators are up for reelection. The political reality, then, is that the cuts must last longer than two years, "but a four-year bill might not be prohibitively expensive. 'I'm thinking this is maximum [sic] like a four-year extension.'" *Id.* (quoting Marc Gerson of Miller & Chevalier Chtd.). Another prediction: "Three to five years is more likely than eight years" [referring to the eight-year extension of the 2017 Tax Act]. *Id.* (quoting Jonathan Traub of Deloitte Tax LLP).

## 8. Estate and Gift Tax Measures

The estate and gift tax provisions do not have a big revenue impact in relation to the overall 2017 Tax Act changes. Extending the estate tax measure would increase the deficit by $189 billion over ten years vs. $4.6 trillion for extending all the 2017 Tax Act. But the estate tax provisions are highly charged political issues and are likely to be included in the tax cut extensions. Because of the Byrd Rule, the extensions of the $10 million (indexed) exclusion amount will probably last for only 10 years (or less). It will automatically revert to a lower exclusion amount at the end of that time—whether it will be further extended may depend on how the political winds are blowing at that time.

Not only is it likely that the $10 million (indexed) exclusion amount will be extended, the Republican sweep raises the specter of possible *repeal* of the estate tax. Indeed, Senator John Thune (R-SD), who will be the new Senate majority leader, has repeatedly introduced estate tax repeal bills and initially won his Senate seat in part by running against the "death tax."

The greatly increased likelihood that the $10 million (indexed) exclusion amount will be extended has reduced the perceived pressure on clients to take advantage of the large exclusion amount before it may be slashed in half. Clients who were not totally comfortable making large gifts will likely wait before making gifts to see when Congress will ultimately decide whether the larger exclusion amount will be extended (but they should consider engaging in planning, structuring trusts, etc. currently so the planning will be in place when they decide to make large gifts). Clients who were not totally comfortable making large gifts are probably the clients most interested in implementing transfer planning with SLATS, so we may see less emphasis on SLATs going forward. Clients who have enough wealth that they are comfortable making gifts are best advised to make the gifts currently, so that future appreciation can be removed from the estate.