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Congressional Legislative Tax Developments in 2025—A Current Update

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Introduction

Developments in Washington D.C. about tax legislation in 2025 are changing daily. Congress is very focused on dealing with tax legislation as early in the year as possible, though lots of negotiations lie ahead. The Congressional reconciliation process is a complex platform with many moving parts (and, obviously, many negotiators, all with varying priorities and constituencies).

People are constantly asking what is going on and where the process stands. This is a detailed summary of the many factors having an impact on the negotiations, but an executive summary of the current status of the legislative considerations is in Item 1 below.

1. Executive Summary

A major facet of tax legislation in 2025 will be extending the Tax Cuts and Jobs Act (TCJA) enacted in 2017. The Trump administration is proposing other tax cuts as well.

The legislation will proceed as a "reconciliation act." Once each fiscal year, Congress may adopt a reconciliation act that requires only majority vote approval in the Senate (rather than the traditional 60-vote requirement). Republicans have a majority of both the House and Senate in 2025; if they come to agreement, the House and Senate could pass a reconciliation act without bipartisan involvement.

Extension of the TCJA and other tax measures come with a big fiscal price tag. An extension of the TCJA would cost about $4.6 trillion over ten years (decreased revenues and additional interest expense). Other tax proposals have large revenue impacts as well. For example, extending the $10,000 limitation on the deduction for state and local taxes (SALT) to $15,000 for individuals and $30,000 for joint filers would cost over $600 billion over ten years, and some members of Congress have been adamant that further relief for SALT taxes must be included in the tax package.

The U.S. has a $36 trillion national debt, and it is anticipated to grow to $58 trillion even without the extension of the TCJA. The deficit for the current fiscal year, through February 2025, is 17 percent higher than the prior fiscal year for the same period, largely due to spending increases in Medicare, Social Security, and interest on the public debt. Some members of Congress are very concerned about deficits and the growing national debt.

The Republicans have razor-thin margins in the Senate and especially in the House. Republicans hold a 218-214 majority in the House. The margin will likely be 220-215 after special elections are held in April and May to replace Representatives who have died or resigned, but the Republican margin will drop by one when Rep. Elise Stefanik (R-NY) is confirmed to be ambassador to the United Nations until special elections can occur to fill her seat (which could be about 90 days after she resigns). When the margin is 219-215, any two Republican Representatives could prevent a bill from passing because there is no method for breaking a tie vote in the House.

The reconciliation process begins with the adoption of a budget resolution, agreed to by both the House and Senate. The budget resolution sets a "budget window" (traditionally ten years), gives instructions to committees, and sets an overall deficit limitation. The House and Senate have each adopted their own budget resolutions, with big differences to be negotiated.

The Senate budget resolution only addresses border security and defense, while the House version also addresses taxes. The House budget resolution leaves $4.5 trillion for tax cuts and calls for $2 trillion of spending cuts over ten years. (The amount allocated to tax cuts will move down or up, dollar for dollar, to the extent spending cuts are less than or more than $2 trillion.) The House budget resolution would add $2.8 trillion to the national debt over ten years (but the resolution says it anticipates that $2.6 trillion of additional revenues will come from economic effects of the tax cuts, far more than most economists predict). One might anticipate that "budget hawks" in the House would be reluctant to agree to legislation that adds $2.8 trillion to the national debt over ten years, but Rep. Thomas Massie (R-KY) was the sole Republican in the House to vote against the budget resolution. He did so because the act would produce additional budget deficits, saying "Why would I vote for that?" On the other hand, one of the conservative members of the House Freedom Caucus responded, "It's a new day."

The "Byrd rule" applies in the Senate. Any Senator can call point of order as to (1) any item that does not have fiscal impact, (2) any item affecting Social Security, or (3) if the act would increase deficits outside the budget window. (That third item is the reason most reconciliation acts "sunset" and revert to the prior law at the end of the budget window.)

Negotiations are underway to resolve the differences between the Senate and House budget resolutions. The Senate has agreed to add tax provisions. Some of the negotiations are about what additional tax provisions would be addressed in addition to extending the TCJA. Items being considered include the President's tax priorities, including exclusion of tips, overtime pay, and Social Security from income taxation. Senate Finance Chair Mike Crapo (R-ID) has acknowledged that the possible additions could cost between $800 billion and potentially several trillion dollars. He has noted that Senate Republicans have suggested nearly 200 tax proposals; he identified only three of them, one of which is "repeal, or at least reduction of the estate tax, as 'rather prominent senators' want." Doug Sword, *Crapo Says Tax Package Will Be Bigger and Broader Than Expected*, TAX NOTES TODAY FEDERAL (Mar. 13, 2025).

A major difference between the House and Senate resolutions is that the Senate uses a "current policy" baseline (which assumes that the current tax rates or provisions continue indefinitely) to gauge the economic impact of the act, whereas the House uses a current law approach (which assumes that the tax system will revert to its pre-TCJA state as is called for under current law (on January 1, 2026, for the individual and estate tax provisions)). The Senate version would allow the TCJA to be extended permanently (because the system currently in effect is the baseline for judging the fiscal impact of the act). Some members of the House and Senate view that as "intellectually dishonest" and "magic math." Even if the current policy baseline assumes no revenue impact, passage of the act would still increase deficits by $4.6 trillion (less whatever spending cuts are included) over ten years. To avoid the Byrd rule if a current policy approach is used, each of the approximately 40 provisions in the TCJA would have to be tweaked in some way that is more than "merely incidental" so that each of those provisions would have a fiscal impact (compared to the current policy). The Congressional Budget Office and the Joint Committee on Taxation are required to "score" fiscal bills using a current law baseline approach. The current policy baseline approach has never been used for a reconciliation act, and the Congressional Budget Act (which sets out the reconciliation process) in §257 defines the baseline using a current law approach. However, the budget resolution conceivably could, in setting the limit on the amount by which deficits may be increased under the act, direct that the deficits be calculated for purposes of that limit using current policy as a baseline.

The current policy baseline issue will have a vitally important impact: "Just how jarring the eventual price tag will be depends on whether Crapo and Senate leadership can win approval from the Senate parliamentarian – or proceed without that approval – for the reconciliation bill to be scored on a current-policy basis. *Id*.

Assuming, consistent with the Congressional Budget Act, that the current law approach is used, tax cuts might last less than the full ten years of the budget window. That happened in the 2017 Act, when the individual tax provisions ended after 8 years in order to meet the overall $1.5 trillion deficit impact number set in the budget resolution for the TCJA.

The TCJA (including the $10 million (indexed) estate and gift tax exclusion amount) likely will be extended, but it may be for just ten years, or it may be for less than ten years, or it may be "permanent" if the current policy approach is used (although any tax law can be changed by the next Congress). But that cannot be certain. Lots of negotiation remains, and negotiations around specific spending cuts may be very intense. Negotiations may include whether the estate tax will be repealed or reduced (but it seems unlikely that the estate tax could be repealed in a reconciliation act because of the Byrd rule). The Republicans' goal is to have the act completed by late May, but negotiations may extend that process to substantially later in 2025.

In the meantime, many clients who do not want to lose the opportunity of using the large (now almost $14 million) gift exclusion amount, but are not eager to make large gifts, may take a wait-and-see approach. If willing to do so, a client may consider engaging in planning, structuring trusts, etc., so the planning will be in place when the client decides to make large gifts (especially if it appears at some point that the large exclusion amount may not be extended). 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 their estate.

Bills to repeal the estate tax (but leave the gift tax with a lower 35% rate) have been filed in the House and Senate, but those bills would require a 60-vote approval in the Senate, and at this point appear unlikely to be enacted.

2. Legislative Developments

a. **FY 2025, FY 2024, and FY 2023 Greenbooks.** Tax legislative proposals from the Biden Administration in the FY 2025, 2024, and 2023 Greenbooks included detailed extensive legislative tax proposals (with broad sweeping changes for transfer taxes and grantor trusts), as summarized in Item 3.a. of LOOKING AHEAD-Estate Planning in 2024, Current Developments & Hot Topics (December 2024) found **here** and available at **www.bessemertrust.com/for-professional-partners/advisor-insights.**

The Trump administration budget proposals during President Trump's first term did not include detailed legislative tax proposals. Whether they will in his second term remains to be seen.

b. **IRS Funding.** The Inflation Reduction Act of 2022 included $79.6 billion of additional long-term IRS funding available until September 30, 2031. For a discussion of the matters for which the funds would be used, additional revenues anticipated as a result of the additional funding, and steps that have been taken to "claw back" some of the funds targeted for enforcement, see Item 3.b of LOOKING AHEAD – Estate Planning in 2024, Current Developments & Hot Topics (December 2024) found **here** and available at **www.bessemertrust.com/for-professional-partners/advisor-insights**.

The additional funding included $45.64 billion for enforcement. The anticipated revenue increases from the additional enforcement funds have been estimated anywhere from 2.5-to-1 to as much as 12-to-1 (the higher figure applies to audits of high-income taxpayers). The Congressional Budget Office Economic Outlook Report in January 2025 estimated that the $20 billion of rescinded funds for enforcement "would reduce individual and corporate income tax receipts over the 2025-2034 period by $66 billion—resulting in a net increase in the projected cumulative deficit of $46 billion." Congressional Budget Office, THE BUDGET AND ECONOMIC OUTLOOK: 2025 TO 2035, at 14 (January 2025).

There are reports that the Trump administration may be aiming to cut up to **half** of the IRS's roughly 90,000 workforce. *See* Erin Stowey, *Trump Aims to Cut IRS Workforce in Half by End of Year*, BLOOMBERG DAILY TAX REPORT (March 4, 2025).

c. **Tax Legislative Impacts of Republican Sweep in 2024 Elections; What Will Happen to the Estate and Gift Tax Basic Exclusion Amount?** The Republican sweep of the Presidency and majorities in the Senate and House in the 2024 elections (the "Republican trifecta") will lead to major anticipated legislative changes.

(1) **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 sometimes referred to as the Tax Cuts and Jobs Act (TCJA). Most of those provisions for individuals would otherwise sunset on January 1, 2026. (As discussed below, however, most likely these cuts could only be extended for 10 years, or even less, because of the legislative "reconciliation" process.)

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

The Trump administration has also suggested additional cuts at various times, including: (1) cutting the corporate income tax rate from 21% to 15% (perhaps only for companies having their activities in the United States); (2) expanding the SALT deduction; (3) providing income exclusions for tips for certain industries (but tipped income would still be subject to payroll taxes), overtime pay (which could cost $750 billion over 10 years), and Social Security payments; (4) creating new tax cuts for made-in-America products; (5) "tax incentives" for shipbuilding; and (6) making interest payments on car loans for American-made vehicles tax deductible. The administration has proposed increasing revenues by adding additional tariffs (which may be in executive orders rather than in a reconciliation act), ending the carried interest break used by private equity fund managers, and ending tax breaks for sports team owners. *See* Gardner et al, *Trump Will Seek to End Carried Interest, Expand SALT in Tax Bill*, BLOOMBERG DAILY TAX REPORT (Feb. 6, 2025); Edmondson & Duehren, *Medicaid and More May Be Cut to Pay for Trump's Agenda*, NEW YORK TIMES, Section A at 15 (Jan. 24, 2025).

(2) **Financial Impact.** Various estimates for the financial impact of extending the expiring tax cuts from the TCJA are emerging (and more will be issued).

(a) **Full TCJA Extension.** The nonpartisan Congressional Budget Office estimated in May 2024 that a full TCJA extension would add $**4.6 trillion** to the deficit over ten years (2025-2034) ($3.973 trillion of tax and $606 billion of interest). *Budgetary Outcomes Under Alternative Assumptions About Spending and Revenues,* Table 2, CONGRESSIONAL BUDGET OFFICE (May 2024).

More recently, the Tax Foundation increased the estimated deficit increase from $4.6 trillion to **$5.429 trillion** for a full TCJA extension for 2025-2034 ($4.719 trillion after considering economic effects). It estimates lost revenues of $4.5 trillion ($3.6 trillion for individual provisions, $240 billion for estate tax provisions, and $648 billion for business provisions), offset by $710 billion of tax revenue from economic growth (16 percent of revenue losses), plus added interest costs of $941 billion, for a combined deficit increase of $5.4 trillion ($4.6 trillion dynamically). (Observe: those numbers add to a combined deficit increase of $5.429 trillion and $4.719 trillion dynamically, rather than the "$4.6 trillion dynamically" number stated in the summary of the report.) *See* Erica York & Garrett Watson, *Making the Tax Cuts and Jobs Act Permanent: Economic, Revenue, and Distributional Effects*, TAX FOUNDATION (Feb. 26, 2025).

(b) **Extension of Individual Provisions.** Extending the expiring *individual* provisions for 2025-2034 would add $3.256 trillion of deficits from reduced tax revenue and additional interest outlay of $467 billion, for a total of $3.723 trillion. *Budgetary Outcomes Under Alternative Assumptions About Spending and Revenues,* Table 2, CONGRESSIONAL BUDGET OFFICE (May 2024). A more recent report from the Treasury Office of Tax Analysis estimates that revenue estimates for extending the individual and estate provisions of the TCJA for 2026-2035 is $4.154 trillion (an estimate of additional interest outlay is not included). *The Cost and Distribution of Extending Expiring Provisions of the Tax Cuts and Jobs Act of 2017*, U.S. DEPARTMENT OF THE TREASURY OFFICE OF TAX ANALYSIS, at 4, Table 1 (Jan. 10, 2025). Observe that the more recent estimate is for 2026-2035 rather than 2025-2034, but the more recent report prompted one commentator to conclude that estimates of extending all the TCJA will be revised "significantly higher than the $4.6 trillion previously estimated once there is a new budget baseline." Alexander Rifaat, *Treasury: Republican TCJA Extension Plans Will Cost $5.5 Trillion*, 186 TAX NOTES FEDERAL 591 (Jan. 20, 2025).

The Joint Committee on Taxation's recent unofficial estimate is that extension of the expiring *individual* provisions of the TCJA for 2025-2034 would reduce revenues by $3.37 trillion, and $372 billion of offsetting revenue from extra economic growth would reduce the net revenue effect to about $3 trillion. (Those numbers do not include additional interest outlays.) Staff of the Joint Committee on Taxation, *Overview of JCT Methodology for Analyzing the Macroeconomic Effects of Proposed Changes in Tax Law* (Dec. 2024).

A Treasury Department report estimated in January 2025 that extending the expiring TCJA individual cuts only for individuals with incomes below $400,000 and allowing the business and estate tax cuts to expire would reduce the cost to $1.8 trillion ("less than half the cost of extending all the individual and estate tax cuts and about a third the total cost including business provisions"). *The Cost and Distribution of Extending Expiring Provisions of the Tax Cuts and Jobs Act of 2017*, U.S. DEPARTMENT OF THE TREASURY OFFICE OF TAX ANALYSIS, at 2 (January 10, 2025).

(c) **Extension of Provisions Other Than Individual Rate Brackets.** The Urban Brookings Tax Policy Center has estimated the revenue impact of extending the TCJA provisions other than the income tax rate brackets. If the rate brackets return to their pre-TCJA levels of 10, 15, 25, 28, 33, 35, and 39.6 percent, the revenue cost would be reduced from $4.0 trillion to $750 billion (an 80 percent reduction). If only the top individual bracket were increased from 37 to 39.6 percent, the cost of the TCJA extension would fall by about 10 percent or $360 billion (2025-2034). *Options to Extend the 2017 Tax Act (TCJA) and Modify Individual Income Tax Rates*, URBAN BROOKINGS TAX POLICY CENTER (Feb. 2025).

(d) **Extending Estate Tax Provisions.** The Congressional Budget Office 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). More recently, a January 2025 report from the Department of Treasury estimates that allowing the estate tax cuts to expire would result in a reduction of **$223 billion** of revenues over a ten-year period from 2026-2035 (it did not include an increased net interest outlay). *The Cost and Distribution of Extending Expiring Provisions of the Tax Cuts and Jobs Act of 2017*, U.S. DEPARTMENT OF THE TREASURY OFFICE OF TAX ANALYSIS, at 4, Table 1 (Jan. 10, 2025).

(e) **Extending TCJA and Including Other Trump Administration Changes.** Adding in other possible changes suggested by the Trump administration, including exempting overtime pay from taxation and repealing the state and local tax deduction limitation (which reduces revenues over ten years by $1.2 trillion, as discussed below), offset somewhat by additional broad tariffs, would add **$7.75 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. 28, 2024). House Ways and Means Committee Chair Jason Smith (R-MO) says that $5.5 trillion would be the cost to pay for extension of the 2017 TCJA and "Trump's campaign promises" of not taxing tips, overtime or Social Security payments to seniors. *See* Doug Sword, *House Republicans at Odds as Markup of Giant Tax Bill Scheduled*, 186 TAX NOTES FEDERAL 1329 (Feb. 17, 2025). (This is contrasted with the $7.75 trillion and $6.5 trillion estimated by the Committee for a Responsible Federal Budget (see immediately above) and the Tax Foundation (see below).)

The Committee for a Responsible Federal Budget has provided a range of revenue estimates of the various other Trump administration proposals, with the range depending on how broadly the cuts are applied:

- Cutting taxes on tips: $100 billion to $550 billion
- Cutting taxes on overtime: $150 billion to $3 trillion
- Cutting taxes on Social Security: $550 billion to $1.5 trillion
- Cutting corporate tax rate to 15% for domestic manufacturing: $100 billion to $200 billion
- Closing carried interest loophole: Additional revenue of $20 billion to $100 billion

Trump Tax Priorities Total $5 to $11 Trillion, COMMITTEE FOR A RESPONSIBLE FEDERAL BUDGET (Feb. 6, 2025), available at **https://www.crfb.org/blogs/trump-tax-priorities-total-5-11-trillion**.

The Tax Foundation has estimated the 10-year revenue loss from extending specific portions of the TCJA as well as tax cuts proposed by the Trump administration.

Tax Cut	10-Year Revenue Loss (Before Economic Impact), Billions
TCJA Individual	$3,392.1

TCJA Estate Tax	$ 205.6
TCJA Business	$ 643
SALT Full Deduction	$1,040.5
Lower Corporate Rate to 15% for Domestic Production Activities	$ 361.4
Exempt Social Security Benefits from Income Tax (Not permitted in reconciliation)	$1,189.1
Exempt Overtime Pay from Income Tax	$ 747.6
Exempt Tips from Income Tax	$ 118
Deduction for auto loan interest	$ 61
Total (other than Social Security)	**$6,569.2**

William McBride, Erica York, & Garrett Watson, *Questions About Tax Cuts, Tariffs, and Reconciliation After the Election*, TAX FOUNDATION (Nov. 13, 2024), available at **https://taxfoundation.org/blog/trump-tax-cuts-tariffs-reconciliation/**.

The Urban Brookings Tax Policy Center estimates that excluding Social Security benefits from gross income for 2025-2034 fiscal years would decrease revenues by $1.4705 trillion. *Taxation of Social Security Benefits* (August 2024), URBAN BROOKINGS TAX POLICY CENTER (Feb. 27, 2025).

(3) **Do Tax Cuts Pay for Themselves?** The Committee for a Responsible Federal Government has recently summarized the conclusions of various studies about the effects of revenues from future economic growth resulting from extending various provisions of the TCJA. *Putting Numbers to TCJA Dynamic Feedback Estimates*, COMMITTEE FOR A RESPONSIBLE FEDERAL BUDGET (Jan. 9, 2025). The following is a table from that report.

Dynamic Feedback Estimates of TCJA Extension (ten years, billions)

	Conventional Estimate	Dynamic Estimate	Total Dynamic Feedback	% Dynamic Feedback
Congressional Budget Office*'	$3,700	~$3,760	-$60	-2%
Joint Committee on Taxation'	$3,368	$2,996	$372	11%
The Budget Lab at Yale'	$2,816	$2,801	$15	1%
Tax Foundation+	$4,047	$3,466	$581	14%
Penn Wharton Budget Model+	$4,011	$3,834	$177	4%
Pomerleau-Schneider+	$3,817	$3,635	$182	5%

* The Congressional Budget Office's latest figures do not include an explicit estimate of the dynamic effect of TCJA extension, but their economic estimates imply a possible slightly negative effect that we've estimated here. CBO's estimates incorporate interest rate effects.
' These estimates do not include extension of expiring or expired business provisions.
+ These estimates do include extension of expiring or expired business provisions.

This chart is found at **https://www.crfb.org/blogs/putting-numbers-tcja-dynamic-feedback-estimates.**

The Joint Committee on Taxation's unofficial conventional revenue estimate for extension of just the individual expiring provisions of the TCJA is a loss of $3.37 trillion, and **$372 billion** offsetting revenue from extra economic growth would reduce the loss to about $3 trillion. Staff of Joint Committee on Taxation, *JCT Methodology for Analyzing Macroeconomic Effects 2024* (Dec. 2024), available at **https://www.jct.gov/publications/2024/jct-methodology-for-analyzing-macroeconomic-effects-2024/**, Accordingly, the beneficial effects of tax cuts on the economy are an **11%** reduction of the revenue cost, far short of the 100% needed to claim that tax cuts pay for themselves. In 2017, the Joint Committee on Taxation had estimated a 26% dynamic revenue effect; a main reason for the difference is "the widely accepted economic fact that individual tax cuts (like those in the upcoming 2025 legislation) stimulate less economic growth than legislation with both business and individual tax cuts (like we had in 2017)." Sullivan, *JCT Estimates Small Dynamic Effect from TCJA Extension*, 186 TAX NOTES FEDERAL 413 (Jan. 20, 2025).

Republican leaders have stated that the Congressional Budget Office underestimated by $1.5 trillion in 2017 how much revenues would grow under the 2017 TCJA. *See* Doug Sword, *House Leans Toward Two Bills With Tax Second, Budget Chair Says*, 185 TAX NOTES FEDERAL 2445 (Dec. 23, 2024) (statement by House Budget Committee Chair Jodey Arrington (R-TX)). The CBO acknowledged the underestimation but blames $900 billion of the underestimate on higher than expected inflation and much of the rest on unexpectedly high tariff revenues not included in the original projection. *See* Doug Sword, *Top House Taxwriter Calls Current-Policy Approach 'a Fraud,'* 186 TAX NOTES FEDERAL 1129 (Feb. 10, 2025).

A recent report from the Committee for a Responsible Budget, a nonpartisan fiscal watchdog group, concludes that an extension of the TCJA 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 (Dec. 10, 2024) (emphasis in original), available at **https://www.crfb.org/blogs/tcja-extension-might-not-pay-any-itself**.

A study by economists at Harvard, Princeton, and the University of Chicago concluded that the TCJA's lower corporate tax cuts did stimulate more corporate investment, but they estimated that the law would cause the economy to grow 1% larger over 10 years, generating roughly $750 more in wages for each American worker, less than the $4,000 per employee that had been predicted by the Trump administration. The study concluded that this largest corporate tax cut in U.S. history would result in a long-run increase of domestic corporate capital but would produce small dynamic revenue effects; it would increase corporate income and labor payments, but the extra tax revenue from that activity would be offset by the higher cost of depreciation deductions, which would be immediately expensed. Gabriel Chodorow-Reich, Owen Zidar, and Eric Zwick. 2024. *Lessons from the Biggest Business Tax Cut in US History*, 38 JOURNAL OF ECONOMIC PERSPECTIVES No. 3 (Summer 2024).

The Congressional Budget Office predicts that extension of the individual income tax provisions of the TCJA would have **little budgetary impact** from increased revenues from economic growth and higher interest rates. *How the Expiring Individual Income Tax Provisions in the 2017 Tax Act Affect the CBO's Economic Forecast*, CONGRESSIONAL BUDGET OFFICE (Dec. 2024) ("Because the expiration of the provisions does not significantly change CBO's economic projections, the dynamic budgetary effects of that expiration (that is, the budgetary effects after accounting for changes in the size of the economy stemming from expiration) would be very similar to the conventional estimate -- a $3.7 trillion reduction in the cumulative deficit over the 2025–2034 period.")

The Tax Foundation estimates that an extension of the TCJA, plus reinstatement of 100 percent research and development expensing and bonus depreciation would generate $660 billion in added federal revenues over 10 years (meaning that economic gains offset 16 percent of the lost tax collections). The Tax Foundation report also estimates that all Trump's tax cut proposals would cause tax losses of about $6.7 trillion from 2025 to 2034, and the dynamic score (including increased tax collections from economic gains) would be about $500 billion lower (or about **7.5%**). William McBride, Erica York, & Garrett Watson, *Questions About Tax Cuts, Tariffs, and Reconciliation After the Election*, Tax Foundation (Nov. 13, 2024), available at **https://taxfoundation.org/blog/trump-tax-cuts-tariffs-reconciliation/**.

The Urban-Brookings Tax Policy Center estimates that an extension of the TCJA would cost about $4 trillion (not including over $600 billion additional interest costs), and that tax collections from economic growth would be about **$222 billion** (**about 6%**). It attributes the modest tax collections from economic benefits that arise from the TCJA individual tax cuts to several factors: (1) the tax cuts disproportionately benefit high-income households, who tend to save rather than spend the extra income, (2) the Federal Reserve would likely maintain higher interest rates to prevent the economy from overheating after this infusion of cash, and (3) the reduced tax revenue would cause larger deficits and increased federal borrowing, pushing up interest rates and crowding out private investment and slowing economic growth over time. *See* Benjamin Page, *Extending TCJA Provisions Would Modestly Boost the Economy, But Not Enough to Offset The Cost*, URBAN INSTITUTE & BROOKING INSTITUTION TAX POLICY CENTER (Feb. 6, 2025).

A Penn Wharton University of Pennsylvania Budget Model estimates economic effects of the House budget resolution and the Trump administration tax proposals and concludes that economic effects would be **low**. It concludes that "incorporating the Trump administration's major tax proposals into the FY2025 House budget reconciliation would require that the provisions mostly sunset by December 31, 2033. Even so, primary deficits would increase by $5.1 trillion before economic effects and by $4.9 trillion after modest, positive economic effects." *The FY2025 House Budget reconciliation and Trump Administration Tax Proposals: Budgetary, Economic, and Distributional Effects*, PENN WHARTON BUDGET MODEL (Feb. 27, 2025), available at **https://budgetmodel.wharton.upenn.edu/issues/2025/2/27/fy2025-house-budget-reconciliation-and-trump-tax-proposals-effects**.

A report from the Congressional Research Service dated Feb. 27, 2025, summarized issues regarding dynamic scoring of tax reform proposals, and concluded that studies from the Joint Committee on Taxation, Congressional Budget Office, Budget Lab at Yale, and Tax Policy Center "all imply that an extension [of the TCJA] would likely offer a lower [dynamic scoring] effect than the original TCJA." *See CRS Reviews Dynamic Scoring Models for Tax Bills*, TAX NOTES TODAY FEDERAL (Feb. 27, 2025).

The House Budget resolution assumes $2.6 trillion in revenue from macro-economic effects of the TCJA extension. See Item 2.c(13) below.

(4) **Deficit and National Debt 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 (Jan. 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 (counting debt held by the public and intragovernmental holdings). Even without any extension of the tax cuts, the federal annual deficit will grow to $2.7 trillion by 2034, the federal debt will rise from 100% of GDP in fiscal 2025 to **118%** in fiscal 2035, surpassing its previous high of 106% of GDP set in 1946; "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 (Nov. 15, 2024). That would result in a **$58 trillion national debt** by 2036 (not including debt that would be added from extending the 2017 tax cuts).

The budget deficit for the current fiscal year, through February 2025, is $1.15 trillion, 17% larger than the prior year after adjusting for differences in the calendar. Revenue is up an adjusted 2%, but outlays were up 7% for the fiscal year through February 2025, adjusting for calendar differences. The biggest increases in spending, compared to the prior fiscal year through February, came from the Medicare program ($124 billion more), interest on public debt ($45 billion), and Social Security ($49 billion more). (These outlays largely reflect the anticipated ever-increasing costs due to the aging U.S. society.) These significant deficit increases in the current fiscal year suggest that "[f]iscal hawks among congressional Republicans may press for further offsetting steps to ensure the fiscal trajectory doesn't worsen further. Christopher Anstey & Daniel Flatley, *U.S. Budget Gap Hits Record $1.1 Trillion for Fiscal Year So Far*, BLOOMBERG DAILY TAX REPORT (March 12, 2025); *see* U.S. Department of the Treasury, *Monthly Treasury Statement, Receipts and Outlays of the United States Government For Fiscal Year 2025 Through February 28, 2025, and Other Periods* (released March 12, 2025).

The Congressional Budget Office economic outlook dated January 17, 2025, states that the debt held by the public is $28.2 trillion in 2024 and will increase by $23.0 trillion to $52.1 trillion in 2035. Its conclusion is that "[f]ederal debt held by the public rises from 100 percent of GDP this year to 118 percent in 2035, surpassing its previous high of 106 percent of GDP in 1946." Congressional Budget Office, THE BUDGET AND ECONOMIC OUTLOOK: 2025 TO 2035, at 1 (January 2025). The report estimates that the annual deficit would grow to $2.7 trillion by 2034. Its analysis assumes that the TCJA provisions will expire as scheduled by current law. If the TCJA tax cuts are extended, the national debt would be increased commensurately unless revenue offsets are passed along with the extension of the tax cuts. *See generally* Tran, *CBO Projects Rising Debt, Deficit as GOP Considers Economic Plan*, BLOOMBERG DAILY TAX REPORT (Jan. 17, 2025).

Annual revenues as a share of gross domestic product (GDP) fell from about 19.5 percent in the years immediately preceding the Bush tax cuts to just 16.3 percent in the years immediately following. Revenues in 2025 would be $700 billion higher if they were 19.5 percent of GDP, as in the years before the Bush tax cuts. Chuck Marr & Samantha Jacoby, *House Republican Budget's $4.5 Trillion Tax Cut Doubles Down on Costly Failures of 2017 Tax Law*, CENTER ON BUDGET AND POLICY PRIORITIES (Feb. 28, 2025).

Annual deficits are at a very high percentage of GDP. In January 2025, the Congressional Budget Office projected the deficit would grow from $1.9 trillion in fiscal 2025 to $2.7 trillion in 2035 (under the assumption the TCJA provisions would be expiring after 2025). That adjusted deficit would equal 6.1 percent of the projected GDP in 2035, significantly more than the 3.8 percent that deficits have averaged over the past 50 years. Philip Swagel, Director of the Congressional Budget Office, recently stated: "This is historically unusual, that the deficit is so wide at a time when we don't have a crisis, we don't have a global war, we don't have a financial crisis, we don't have a pandemic." An economist with T. Row Price said: "When you look historically for the U.S., this kind of primary deficit is normal around recession periods when the unemployment rate is 8 percent, not 4 percent," *See* Katie Lobosco, *Nonpartisan Group Blasts House Tax Bill as Irresponsible*, 186 TAX NOTES FEDERAL 1916 (Mar. 10, 2025). The Tax Foundation estimates that over $2 trillion in net annual savings will be needed by 2034 to stabilize the budget deficit at 3% of GDP. See Daniel Bunn & Garrett Watson, *All About That Base(line)*, TAX FOUNDATION (Dec. 5, 2024) available at **https://taxfoundation.org/blog/extending-tax-cuts-budgetary-impact/**.

Extending the TCJA would add to these deficits. The Congressional Budget Office has estimated that extending the 2017 tax cuts would result in annual deficits exceeding $2 trillion (6.6 percent of projected GDP) starting in 2027 and rising from there. The budget deficit for FY 2024 (ending Sept. 30, 2024) was $1.8 trillion (6.4 percent of GDP). *Id.*

Treasury Secretary Scott Bessent has argued that reducing annual deficits below 3 percent of GDP should be a priority. Under a current policy baseline (with the TCJA in place), Congress would need to achieve nearly $1.5 trillion in annual deficit reduction to meet that goal. That would require serious cuts to mandatory programs like Social Security, Medicare, and Medicaid. *Id.*

(5) **Interest Payments.** 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 rate on 10-year Treasury notes fell as low as 0.52% in 2020 and is 4.78% as of January 19, 2025, up from 3.96% in January, 2024), the net interest on the public debt grew to $950 billion in FY 24 (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 (Oct. 10, 2024), available at **https://taxfoundation.org/blog/federal-budget-deficit-tcja-revenue-spending/**.

(6) **Inflation.** Inflation was a major issue in the 2024 elections. Tax cuts can be inflationary by increasing demand in an already tight economy, though their actual impact on inflation can vary based on how they are implemented and the prevailing economic conditions. *See generally* Cloyne, Martinez, Mumtaz & Surico *Do Tax Increases Tame Inflation?*, 113 AMERICAN ECONOMIC ASSOCIATION PROCEEDINGS 377 (May 2023). "Tariffs, [cutbacks on] immigration, and the huge fiscal impulse they're going to create by borrowing more – all of those are inflationary." Statement by Maya MacGuineas of the Committee for a Responsible Federal Budget on Nov. 11, 2024, at an AICPA event.

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

(7) **Thin Political Margins.** There are razor-thin margins in the House and Senate. In the House the Republicans hold a 218-214 majority (the margin was 218-215 prior to the death of Rep. Sylvester Turner (D-TX), who will be replaced in a special election, probably in May 2025). Two Republican representatives who resigned are expected to be replaced by Republicans in special elections to be held in Florida on April 1, 2025, which will bring the margin to 220-214. The House Republican margin will drop by one when Rep. Elise Stefanik (R-NY) is confirmed to be ambassador to the United Nations until special elections can occur to fill her seat. Under New York law, the governor must schedule the special election within 10 days of being notified of the vacancy, and the election must take place within 70 to 80 days after that. A bill was introduced in New York that would have allowed the governor to delay congressional special elections until Election Day, potentially pushing the election for Stefanik's replacement to November 2025, but that bill is considered "dead." After Rep. Stefanik resigns and until her replacement is elected (which could occur about 90 days after her resignation) and after the special elections referred to above have been held in April and May 2025, the margin likely will be 219-215 (meaning that two Republican Representatives could prevent a bill from passing because there is no method for breaking a tie vote in the House).

Republicans hold a 53-47 edge in the Senate.

Exacerbating the thin margin in the House is that some members of Congress are deficit hawks who campaigned primarily on reducing the federal deficit. One of those budget hawks, Rep. David Schweikert (R-AZ) who chairs the House Ways and Means subcommittee on oversight, has said he would oppose his party's signature tax bill this year if it is "debt-financed." He warns against addressing expiring TCJA provisions without addressing the bill's impact on increasing debt and deficits. *See* Cohen & Cioffi, *Key House Tax Writer Urges Against Using Debt to Finance Big Cuts*, BLOOMBERG DAILY TAX REPORT (Feb. 7, 2025). Rep. Chip Roy (R-TX) is one of the leaders of the House budget hawks "who are insisting that a reconciliation bill be largely paid for by spending cuts." Doug Sword, *Graham Releases Senate Budget Resolution; House Movement Awaited*, 2025 TAX NOTES TODAY FEDERAL 27-3 (Feb. 10, 2025).

Another contingent that could pose hurdles in negotiations is a group of Republicans in high-tax states who have demanded an expansion of SALT deductions.

President 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*, 185 TAX NOTES FEDERAL 2256 (Dec. 16, 2024). Even so, "[t]he paper-thin GOP majority will introduce complications not seen in 2017, leaving little room for disagreement with the ranks…. Last month's government funding debate provided an early taste of what's likely to come." Joseph Boddicker, *When Campaign Promises Meet Political Reality: This Year's Super Bowl of Tax*, 186 TAX NOTES FEDERAL 131 (Jan. 6, 2025).

One article (about whether a single reconciliation act or multiple acts will be used in 2025) refers to "the reality that the tiny House GOP majority – a fractious group of lawmakers willing to torch members of their own party during heated disputes – will have a hard time passing even one bill, let alone two." Cook, Dennis & House, *Trump Allies Fret Tax-Cut Plans at Risk with GOP Infighting*, BLOOMBERG DAILY TAX REPORT (Jan. 8, 2025).

Douglas Holtz-Eakin, former director of the Congressional Budget Office, summarizes: "Every House Republican has a veto… Peace in the Middle East will be easier." Cohen & Cioffi, *Key House Tax Writer Urges Against Using Debt to Finance Big Cuts*, BLOOMBERG DAILY TAX REPORT (Feb. 7, 2025).

Another political reality is if passage of the Act is not completed by September 2025, some members of Congress will be going into election season for the 2026 Mid-terms, and reaching compromise may be even more difficult.

A further political reality is that addressing border security and immigration issues "has vexed Congress for decades" and could "eat up a great amount of political capital and good will, potentially jeopardizing the size, scope, and ambition of a tax measure." Cook, Dennis & House, *Trump Allies Fret Tax-Cut Plans at Risk with GOP Infighting*, BLOOMBERG DAILY TAX REPORT (Jan. 8, 2025).

(8) **SALT Cap Repeal.** The Trump administration has indicated that it favors repealing the $10,000 SALT cap (on the deduction for state and local taxes) at least to some degree, and some members of Congress are very focused on repealing the cap. But the SALT cap has been a potent revenue generator from the TCJA. Repealing the SALT cap entirely is estimated to reduce revenue by $1.2 trillion over ten years. *SALT Cap Expiration Could be Costly Mistake*, 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). Doubling the cap to $20,000 for married filers would cost $170 billion. *See* Cohen, *What is SALT, the Tax Deduction Dividing Congress? QuickTake*, BLOOMBERG DAILY TAX REPORT (Feb. 11, 2025).

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.

> The House's razor-thin majority, especially in the early months of Trump's presidency, means lawmakers critical of the SALT cap have more sway than when the TCJA became law.

> House Ways and Means Committee member Brian K. Fitzpatrick, R-Pa., pointed to the much wider majority Republicans had in 2017, when 12 GOP House members from high-tax states voted against the legislation — with some citing the SALT cap as the motivation — and it still passed the chamber.

Stanton, *Cost of SALT Changes Creates Headaches Under GOP's Slim Majority*, 186 TAX NOTES FEDERAL 373 (Jan. 13, 2025). Furthermore, "any SALT cap rollback has been invariably scored by government and private analysts as favoring high-income taxpayers." *Id.*

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).

Four House Republicans who had been strong advocates of increasing or eliminating the SALT threshold were defeated in the November 2024 elections. Six House Republicans appear to remain who are strong advocates of the SALT deduction (Reps. Kevin Kiley and Young Kim of California, Tom Kean of New Jersey, and Andrew R. Garbarino, Nick LaLota and Michael Lawler of New York), although at this point none have threatened to withhold their vote on a final tax bill over the issue. *See* Sword, *House Republican SALT Split Is on Full Display at Member Day*, 186 TAX NOTES FEDERAL 776 (Jan. 27, 2025); Cohen, *What is SALT, the Tax Deduction Dividing Congress? QuickTake*, BLOOMBERG DAILY TAX REPORT (Feb. 11, 2025).

Another complication is that the debate may include consideration of various ways to limit the effectiveness of "state work-arounds" that effectively permit paying state and local taxes by entities to reduce the flow-through income to owners for federal income tax purposes by a commensurate amount. *See* Watson, *Policymakers Must Weigh the Revenue, Distributional, and Economic Trade-Offs of SALT Deduction Cap Design Options*, TAX FOUNDATION (Dec. 7, 2023), available at **https://taxfoundation.org/blog/salt-deduction-cap-design-options/**.

(9) **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. 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 stated that 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).

Deficit hawks in the House will likely push for more deficit-conscious legislation; they will want deep spending cuts to avoid deficit spending from the reconciliation act. Offsetting $4.6 trillion of revenue losses, however, will be difficult; instituting structural reform of entitlements would be a heavy political lift. President Trump campaigned to some degree on not touching Medicare or Social Security. *See* Cohen & Cioffi, *Key House Tax Writer Urges Against Using Debt to Finance Big Cuts*, BLOOMBERG DAILY TAX REPORT (Feb. 7, 2025).

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. Doug Sword & Cady Stanton, *Cutting Taxes is Easy: Paying for It Is Not*, 185 TAX NOTES FEDERAL 329 (Oct. 14, 2024).

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.

The House Ways and Means Committee has circulated a 50-page document listing a wide variety of possible spending cuts. Examples of possibilities included in the report are a wide variety of Medicare and Medicaid cuts (including reducing federal Medicaid payment rates), undercutting the Affordable Care Act's Medicaid expansion by reducing the share of Medicaid costs the federal government pays, rollback of clean energy efforts created in the Inflation Reduction Act (although congressmen with projects in their districts will want some of the programs to remain), eliminating the home mortgage interest deduction (which would save $1 trillion over 10 years but would be very unpopular), denying corporations the ability to deduct state and local taxes, and taxing all scholarships and fellowship income. *See* Edmondson & Duehren, *Medicaid and More May Be Cut to Pay for Trump's Agenda,* NEW YORK TIMES, Section A at 15 (Jan. 24, 2025). A political challenge is that "[m]any of the cuts Republicans are contemplating target programs aimed at helping low-income Americans, all in the service of paying for the extension of tax cuts that disproportionately benefit the wealthy." *Id*.

The Republican Study Committee, a conservative GOP House caucus, has presented a plan for massive spending cuts that would cut $14 trillion in spending over 10 years.

Cutting the federal workforce other than the Departments of Defense, Veteran Affairs, and Homeland Security by 10% will save about $11 billion annually. *See* Kamarck, *Trump's Dramatic Plan to Cut the Federal Workforce*, BROOKINGS INSTITUTION (Jan. 30, 2025), available at **https://www.brookings.edu/articles/trumps-dramatic-plan-to-cut-the-federal-workforce/**.

Cutting the *entire* federal workforce by 10% could save $559 to $608 billion over 10 years (including both salaries and health benefits). Note that employees in the Departments of Defense, Veteran Affairs, Homeland Security, and Justice make up approximately 68% of federal workers. *See* Dickerson, *Fiscal Effects of Reducing the Federal Workforce*, ECONOMIC POLICY INNOVATION CENTER (Jan. 28, 2025), available at **https://epicforamerica.org/education-workforce-retirement/fiscal-effects-of-reducing-the-federal-workforce/**

Tariffs may add additional revenue, but tariffs added by executive orders would not be in the reconciliation act and could not be recognized as pay-fors to offset the tax losses from extending tax cuts. Suggested 25% tariffs for Mexico and Canada (except for some Canadian energy and resource imports that will be tariffed at 10%) would raise $1.3 trillion over 10 years and additional 10% tariffs for China would raise $200 billion over 10 years (if they are kept in place for the full 10 years). Accounting for economic effects, the combined tariffs for China, Mexico, and Canada (both enacted and delayed) would raise $1.3 trillion over 10 years. *See How Much Revenue Will Trump's Tariffs Raise?*, COMMITTEE FOR A RESPONSIBLE FEDERAL BUDGET (Feb. 4, 2025), available at **https://www.crfb.org/blogs/how-much-revenue-will-trumps-tariffs-raise**.

(10) **Reconciliation Legislative Process.** The Senate can pass tax legislation with a mere majority (as opposed to 60 votes required for most legislation to overcome the filibuster) 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*, 2024 TAX NOTES TODAY FEDERAL 223-17 (Nov. 19, 2024) (statement from Maya MacGuineas, president of the Committee for a Responsible Federal Budget).

(a) **Budget Resolution; Budget Impact Number; Senate "Vote-a Rama".** 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 of the TCJA may be too large for some members of Congress to stomach. The budget resolution for the 2017 TCJA 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 TCJA 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*, 185 TAX NOTES FEDERAL 1471 (Nov. 18, 2024) (quoting Jonathan Traub of Deloitte Tax LLP).

The budget resolution can specify that a budget reconciliation bill will "reconcile" the work by various committees working on budget issues and comply with 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 single bill is voted on in the House and Senate. The Senate allows unlimited debate and amendments on reconciliation bills. The Senate majority members may end up having to make embarrassing votes against amendments that on their own would be very appealing to their constituents (and which could be used against them in campaign ads in upcoming elections). Commentators have pointed to this factor as one reason that some members of Congress prefer one rather than two reconciliation bills in 2025 (see Item 2.c(11) below):

> The Senate has [the] preference [in 2025 for two reconciliation bills to address tax policy separately from other priorities including energy, immigration, and defense], even though doing two bills instead of one is against members' interests, because each reconciliation bill — including a budget resolution, followed by the bill itself — exposes Republican senators to two vote-a-ramas, [Rohit] Kumar [(with PwC)] said, referring to a series of votes on amendments that usually stretches for hours. For most bills, debate is limited, but for these two portions of the reconciliation process the price is high for the majority — debate is unlimited, and there is no limit on the number of difficult-to-vote-against amendments that the minority can force the majority to vote down.
>
> Kumar noted that Democrats had to take hard-to-defend positions in 2010, such as voting down an Affordable Care Act rider that would have prohibited qualified plans from providing an erectile dysfunction treatment to sex offenders.
>
> "Reconciliation bills in the Senate for the majority are no fun," Kumar said. "The minority comes up with its most conniving, politically sharp-edged amendment and makes the majority vote on it, and there's no way out of it."
>
> "No Senate majority is like, 'Oh, let's do this twice,'" he said.
>
> Senate Finance Committee member Bernie Sanders, I-Vt., chuckled when asked if he would have a creative vote-a-rama amendment. "You'll get it," he said, noting that he had "a little bit of time" to work on it.

Stanton & Sword, *Fast Budget Timeline Faces Reality of Small House GOP Margin*, 186 TAX NOTES FEDERAL 947 (Feb. 3, 2025).

The reconciliation bill, when ultimately approved by the House and Senate, goes to the President for approval or veto.

(b) **Byrd Rule.** 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. *See The Budget Reconciliation Process: The Senate's "Byrd Rule,"* CONGRESSIONAL RESEARCH SERVICE (Sept. 28, 2022).

Despite the restrictions of the Byrd rule, nine Republicans on the Senate Finance Committee, led by Senators Crapo and Thune, sent a letter to President Trump on February 13, 2025, vowing they "would not support a tax package that only provides temporary relief from tax hikes." *See GOP Finance Committee Members Urge Trump to Make TCJA Permanent*, TAX NOTES TODAY FEDERAL (Feb. 13, 2025). They would use a "current policy" approach to achieve that result; under a current policy approach, a permanent extension of the TCJA would have zero revenue impact. Doug Sword & Cady Stanton, *What's in a Score? Maybe the Future of TCJA*, 186 TAX NOTES FEDERAL 1499 (Feb. 24, 2025).

(c) **Scoring Rules.** Scoring rules for determining the fiscal impact of the reconciliation act will become a central discussion point in 2025. One significant issue will be whether to use a "current law" baseline (under which tax cuts would expire) or a "current policy" baseline (the current law, assuming it is extended indefinitely).

i. **Current Law Is Typically Used.** Under the "current law" approach, the baseline assumes that revenue programs that expire within a specified time frame will operate as written. The Congressional Budget Act of 1974 directs the Congressional Budget Office (CBO) to provide Congress an annual report summarizing baseline projections of spending, revenue, and resulting deficits (or surpluses). These estimates give Congress a policy-neutral baseline for analyzing the budgetary effects of proposed legislation. The CBO baseline is typically the starting point for the annual congressional budget resolution. The Balanced Budget and Emergency Deficit Control Act requires that a current law approach be used in developing the baseline. 2 U.S.C. 907. The Congressional Budget Act, which authorizes the reconciliation process, in §257 defines the baseline: "For any budget year, the baseline refers to a projection of current-year levels of new budget authority, outlays, revenues, and the surplus or deficit into the budget year and the outyears based on laws enacted through the applicable date."

ii. **Current Policy Approach Favored by Senate.** Senator Michael Crapo (R-ID), the Senate Finance Committee Chair, 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, [to say] that is a $4 trillion deficit. That's ridiculous." Andrew Duehren, *Republicans Ponder: What if the Trump Tax Cuts Cost Nothing?*, NEW YORK TIMES (Nov. 25, 2024) (quoting Senator Crapo in an interview with Larry Kudlow).

Sen. Ron Johnson (R-WI), who sits on both the Senate Budget and Senate Finance Committees, says the Senate will use a two-Act approach (addressing border security and defense in the first Act and tax issues in the second Act), and will use a current policy approach in the first Act to set precedent for the second Act. *See* Cady Stanton & Doug Sword, *Senate to Move on Budget Plan, But House Embraces the Challenge*, 186 TAX NOTES FEDERAL 1130 (Feb. 6, 2025).

Indeed, Section 1101(2) of the Senate budget resolution lists "Federal Revenue Changes Relative to **Current Policy**." (emphasis added).

Treasury Secretary Scott Bessent has stated that a current policy approach will be used for the reconciliation act (or acts). *Id*.

As noted above, nine Senate Republican leaders sent a letter to President Trump on February 13, 2025, vowing they "would not support a tax package that only provides temporary relief from tax hikes." The current policy approach would produce no revenue impact even if the TCJA is extended permanently. *See* Doug Sword & Cady Stanton, *What's in a Score? Maybe the Future of TCJA*, 186 TAX NOTES FEDERAL 1499 (Feb. 24, 2025) ("Thune and Crapo have said the only path to permanency is a current-policy baseline and that the House approach won't deliver on that count."). Interestingly, Senate

Finance Committee member Bill Cassidy, (R-LA) filed an amendment to the Senate's February 2025 budget resolution that would "strike references to current policy accounting, and Senator Cassidy was among five Finance Committee Republicans who did not sign the February 13, 2025 letter to the President vowing to support only a permanent extension of the TCJA. *Id.*

iii. **Current Policy Approach Prior Precedent.** The Obama administration promoted the current policy baseline rhetorically to defend extending the Bush tax cuts that were set to expire at the end of 2012, arguing that the extension should be measured against current policy, not the "current law" under which tax cuts would expire. The current policy approach in 2012 reflected that the legislation was deemed to *reduce* the deficit by $737 billion over ten years 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. *See* Andrew Duehren, *Republicans Ponder: What if the Trump Tax Cuts Cost Nothing?*, NEW YORK TIMES (Nov. 25, 2024). However, the Congressional Budget Office and the Joint Committee on Taxation used the current law baseline for scoring the legislation, as required by congressional rules. The Obama administration and some lawmakers merely highlighted the current policy perspective to justify the compromise.

Very significantly, the 2012 legislation was not a reconciliation act. Being able to continue indefinitely what Congress previously did temporarily (with limited budgetary impact), all with only a majority vote in the Senate using reconciliation, is a big additional precedential step. Congress has never used a current policy baseline for reconciliation.

iv. **Letter from Joint Committee on Taxation Addressing the Current Policy Baseline Approach for Projections.** A letter dated February 19, 2025, from five Democratic Senators to the Joint Committee on Taxation (JCT), posed various interesting questions, which Thomas A. Barthold, on behalf of the JCT, answered in a letter dated March 4, 2025. For a copy of the letter, see *GOP Approach to Scoring Tax Plans Unprecedented, Letter Says*, TAX NOTES TODAY FEDERAL (Mar. 4, 2025). Some of the answers are summarized below.

a. **JCT Uses a Current Policy Baseline.** The JCT has used a current law baseline as their default approach to scoring legislation since the 1970s. The reconciliation process is authorized in The Congressional Budget and Impoundment Control Act of 1974. That Act, as amended by the Omnibus Budget Reconciliation Act of 1990, defines the baseline "based on laws enacted through the applicable date." If asked to score the extension of the TCJA, the JCT would use a current law baseline unless directed to score the bill in another particular way.

b. **Approach When Requested to Provide Estimates Using a Current Policy Baseline.** When members of Congress request revenue estimates relative to an alternate baseline (including what members describe as their views of current policy), the JCT presents an estimate with two components, "the first of which is an estimate of the defined current policy relative to the present law baseline followed by the proposed modification as a modification to the defined current policy."

c. JCT Has Provided Estimates For Official Use on the Senate Floor Using a Current Policy Baseline Only For a Special Exception Involving Excise Taxes. When asked if the JCT has ever produced a score on a current policy baseline for official use on the Senate floor, the JCT responded that it has provided such estimates for certain excise taxes because §257(b)(ii)(C) of the Budget Act explicitly defines the baseline "[e]xcise taxes dedicated to a trust fund, if expiring" to be extended at current rates despite their planned expiration under current law. An example is the FAA Reauthorization Act of 2024, which extended taxes dedicated to the Airport and Airway Trust Fund. Implicit in that response is that the JCT has never provided a score for official Senate use under a current policy baseline other than for that specific excepted purpose involving excise taxes dedicated to a trust fund.

d. **Scoring of Spending Increases Under a Current Policy Baseline.** If the JCT were asked to score the impact of extending the expanded child credit under the American Rescue Plan of 2021 or an enhanced insurance premium tax credit under the Affordable Care Act, "relative to a baseline defined to assume that the enhanced premium tax credit was a permanent component of the Internal Revenue Code, legislation extending the enhanced premium tax credit would have no reportable budgetary effect." In effect, under a current policy approach, spending increases also would be scored as being costless to continue.

v. **Criticism of Current Policy Approach.** Rep. David Schweikert (R-AZ), chair of the House Ways and Means Oversight Subcommittee, has strongly criticized suggestions from Senate leaders to use a "current policy" approach:

> Current policy isn't the right way to score a tax bill, says Rep. David Schweikert, R-Ariz., who chairs the subcommittee overseeing the IRS and makes frequent after-votes speeches on the House floor about what he and others — including the CBO — consider to be the nation's unsustainable fiscal path.
>
> "It's intellectually a fraud," Schweikert said of the current-policy approach. "It is an intellectual fraud to say, 'Let's ignore the actual law and let's just keep doing what we're doing because it's convenient,'" he told reporters February 4.
>
> …
>
> "It's disingenuous because every projection of U.S. debt is based on the law. It is not based on our feelings that we like what we're getting today," Schweikert said. "If you're going to play honest economics, then try actually doing honest math."
>
> Schweikert also has a problem with Republicans bashing the scorekeeper, whether it's the CBO or the Joint Committee on Taxation, which scores tax provisions for both its own reports and the CBO's.

Doug Sword, *Top House Taxwriter Calls Current-Policy Approach 'a Fraud,'* 186 TAX NOTES FEDERAL 1129 (Feb. 10, 2025).

House Ways and Means Committee Chair Jason Smith has acknowledged that some members of the House Republican Caucus consider the current policy baseline approach to be a "budget gimmick just so they don't have to do spending cuts." *See* Doug Sword, *Smith Sets Memorial Day Deadline, Airs Additions for Tax Bill*, 186 TAX NOTES FEDERAL 1910 (Mar. 10, 2025).

The House Republican Study Committee, the largest caucus with the House Republican Conference, released an official position statement that reconciliation legislation must reduce the federal deficit. *RSC Adopts Reconciliation Goal*, Republican Study Committee website (Press Release dated Jan. 29, 2025).

Senator Elizabeth Warren, joined by four other Senators, on Feb. 19, 2025, sent a letter to the Chief of Staff of the Joint Committee on Taxation criticizing the current policy approach, asking whether there is any precedent for using a current policy baseline, and arguing that the Republican baseline maneuvering amounts to "magic math" and a "sleight-of-hand."

> Now, Republicans are seeking to extend their tax cuts, which would cost about $3.4 trillion over the next ten years, according to your estimates, or about $4.6 trillion, according to Congressional Budget Office (CBO) estimates once business provisions are extended and interest is included…. Some Republicans have claimed that a TCJA extension would not have any impact on the deficit and that Congress does not need to budget for that additional $4.6 trillion. This is magic math. The deficit cost of tax cuts is real, even for those who do not like the way the math works. After hardworking Americans paid their rent in December, they still had to budget for rent in January. Rent is not free because you paid last month's rent. Congress does not get to ignore that same basic math when it comes to funding more tax cuts for the wealthy.

> Measuring the cost of a tax bill requires a baseline to evaluate the bill against – and by law, that baseline has been "current law." A "current law" baseline means that if a tax cut is set to expire, as much of the TCJA will under law, extending the tax cut costs money. But Senate Republicans have suggested that this year's tax bill should be evaluated based on an assumption that existing cuts will be extended, known as the "current policy baseline." This sleight-of-hand would still drive up the deficit by $4.6 trillion – but would allow Republicans to claim that the price tag of extending TCJA is zero dollars.
>
> All costs must be counted at some point, and since the full cost of TCJA was not counted in 2017, it must be accounted for now if Republicans choose to extend the law. The $4.6 trillion addition to the deficit produced by extending the TCJA does not simply disappear.

Letter currently posted on Senator Warren's website. It is also available at **https://punchbowl.news/warren-letter-re-current-policy-baseline-2/**.

Various commentators have strongly criticized the current policy approach.

The Tax Foundation summarizes:

> [F]uture deficits are higher under a current policy baseline because it includes lower revenues from extending the expiring parts of the TCJA. Because lower revenues from TCJA extension are baked into a current policy baseline, enacting legislation to continue the TCJA would score as having zero additional budget impact. Many lawmakers would likely appreciate the opportunity to extend the tax cuts in legislation that doesn't score as having any additional costs, but, really, that would just mean that higher deficits, interest costs, and long-term debt would already be baked into the projections for future years. Changing the baseline for scoring purposes doesn't change the actual trajectory of revenues, deficits, and debt under a continuation of the TCJA's expiring provisions.

Daniel Bunn, Garrett Watson, *All About That Bases(line)*, TAX FOUNDATION (Dec. 5, 2024) available at **https://taxfoundation.org/blog/extending-tax-cuts-budgetary-impact/**.

The Committee for a Responsible Federal Budget criticizes the current policy approach as a "dangerous precedent" and as "a dangerous and reckless move" that relies on "gimmicks and sleights of hand."

> Adopting a current policy baseline in reconciliation would be a dangerous and reckless move, especially given our near-record debt, exploding interest costs, and out-of-control borrowing trajectory. Our deficit is projected to total almost $2 trillion this year, and we're on course to borrow $22 trillion over the decade before any tax extensions. Any new legislation enacted by Congress should improve that trajectory, not make it worse.
>
> While employing a current policy baseline may be tempting to justify the current tax extensions, it would set a dangerous precedent for future actions. For example, if the temporary measures of the American Rescue Plan had been characterized as current policy, lawmakers could have extended them and added trillions of dollars to the debt with a $0 score.
>
> Adopting a current policy baseline for TCJA extension would allow lawmakers to borrow $4 trillion or more without ever recognizing the impact, and using it in reconciliation would be a clear accounting gimmick to end-run the choices required in budgeting. Remember, the original 2017 tax bill was made to be temporary to keep its reported deficit impact down. Since the impact of extension wasn't accounted for back in 2017, it needs to be accounted for now.
>
> Pretending the TCJA is permanent now wouldn't reduce its price tag; it would just hide it. The money still has to be borrowed.
>
> Showing a $0 impact on paper by changing the rules doesn't actually prevent the $4 to $5 trillion of additional borrowing from taking place. And it doesn't stop that borrowing from pushing up interest rates, slowing economic growth, and putting our debt sustainability at risk.
>
> Instead of relying on gimmicks and sleights of hand, Congress should ensure any tax extension is *truly* paid for and that overall we are reducing our debt, not adding to it. There are plenty of ways to improve the tax bill and incorporate that keep the important parts of the TCJA in place while reducing overall borrowing.

Current Policy Baseline Would Set Dangerous Precedent, COMMITTEE FOR A RESPONSIBLE FEDERAL BUDGET (Jan. 27, 2025) (statement from Maya MacGuineas, president of the Committee for a Responsible Federal Budget).

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."

> 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."

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 (Dec. 7, 2024).

Arnold Ventures, a foundation that "advocates for public policies that maximize opportunity and minimize injustice for all" has blasted the reasons given by the U.S. Chamber of Commerce for supporting the current policy baseline approach, calling it a "fantasy," a "fiscally reckless precedent," and a "heads I win, tails you lose" approach. *Heads I Win, Tails You Lose: The Myths Behind "Current-Policy Baseline*,*"* ARNOLD VENTURES (Feb. 27, 2025) ("a current-policy baseline would allow Congress to claim TCJA permanence will have no impact on the national debt – which is more like a *fantasy*.") (A letter, dated Feb. 26, 2025, was sent to U.S. members of Congress urging the use of a current policy baseline to extend the TCJA. The letter was sent on behalf of 492 state and local chambers of commerce and national trade associations. *See* Doug Sword & Cady Stanton, *Policy Fights Await Rewrite of Tax and Budget Roadmap*, 186 TAX NOTES FEDERAL 1700 (Mar. 3, 2025).

vi. **Some Procedural Effects of Scoring Rules in Reconciliation.** 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 (Nov. 20, 2024) (statement by Chris Towner, policy director for the Committee for a Responsible Federal Budget).

Interesting differences apply to the treatment of expiring tax cuts vs. spending appropriations. When tax legislation is being scored, changes in tax law during the term being analyzed are considered, but §257 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177) requires that projections of funding for discretionary programs generally reflect the assumption that funding in years for which there is not yet an appropriation will be equal to the amounts provided for the current year with increases for inflation. However, the Fiscal Responsibility Act of 2023 established limits—also known as caps—on discretionary funding for 2024 and 2025. In the Congressional Budget Office's baseline, "those caps reduce most discretionary funding in 2025. Because CBO's projections of discretionary funding for years after 2025 are based on the amounts projected for 2025, those caps reduce funding through the end of the projection period." *Budgetary Outcomes Under Alternative Assumptions About Spending and Revenues*, CONGRESSIONAL BUDGET OFFICE (May 2024), available at **https://www.cbo.gov/publication/60271**.

An additional wrinkle is that executive orders restricting renewable energy development credits or a Congressional Review Act challenge that reverts a tax credit to a less generous form may mean that less revenue is gained in the scoring for the 2025 reconciliation act from repealing energy tax credits in the 2022 Inflation Reduction Act or clean energy provisions in the 2021 infrastructure law. If some of the anticipated revenue from repealing those provisions have already been clawed back by the executive orders or CRA challenges, less revenue savings may be scored as revenue offsets. *See* Cioffi, *Trump's Energy Credit Clawbacks Risk Undercutting GOP Tax Plans*, BLOOMBERG DAILY TAX REPORT (Feb. 4, 2025).

vii. **Senate Parliamentarian's Impact on Scoring Rules.** 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 Senate Parliamentarian, Elizabeth MacDonough, was also the parliamentarian when the 2017 TCJA was passed in 2017. She ruled in 2017 that the individual tax cuts that will expire at the end of 2025 were "explicitly temporary" since they were expiring and would therefore not violate the Byrd rule as having a budgetary impact after 10 years. She might view an approach treating an extension of those same cuts as having no cost in the 2025 act as being inconsistent. *See* Doug Sword, *Bye-Bye Round Numbers, Hello Rate Tweaks for Rescored TCJA Bill*, 186 TAX NOTES FEDERAL 1332 (Feb. 17, 2025).

viii. **Budget Resolution Can Define Budget Impact Using Current Policy Baseline.** In setting the budget impact limit, the budget resolution can describe how to calculate the budget impact. Sen. Mike Crapo (R-ID), Senate Finance Committee chair, points out that the budget resolution can adopt a current policy baseline in defining the budget impact number. "While CBO and the Joint Committee on Taxation are required to build their estimates off of current law, the budget resolution adopted at the onset of the reconciliation process can include language requiring a different calculation." Cioffi, *Republican Scoring Plan Poses Pitfalls for Future Tax Bills*, BLOOMBERG DAILY TAX REPORT (Jan. 13, 2025). *See* Staff of Joint Committee on Taxation, *The Joint Committee on Taxation Revenue Estimating Process* (Jan. 28, 2025) ("JCT estimates provide comparisons against predictions of future revenue under present law, *not* current revenue levels"; "Each year the Congressional Budget Office produces a budget baseline that includes a forecast of present law receipts for the 10-year budget period").

ix. **Byrd Rule Impact on Current Policy Baseline Approach.** Any senator can raise a point of order for anything "extraneous" to reconciliation, which would require 60 votes for that provision. Any provision that does not change government outlays or revenues would be extraneous. Therefore, if the budget resolution uses a current policy approach, each of the 40 expiring provisions in the TCJA may need to be tweaked. For each provision, a change must be made that would have a scoring impact (i.e., so it would result in a change using a current policy baseline). For example, for some provisions that might involve a slight tweaking of rates or threshold numbers to qualify for deductions or credits, but the change must be more than "merely incidental," or else the Senate Parliamentarian may declare that the provisions do not have budgetary impact and therefore violate the Byrd rule. *See* Doug Sword, *Bye-Bye Round Numbers, Hello Rate Tweaks for Rescored TCJA Bill*, 186 TAX NOTES FEDERAL 1332 (Feb. 17, 2025); Cioffi, *Republican Scoring Plan Poses Pitfalls for Future Tax Bills*, BLOOMBERG DAILY TAX REPORT (Jan. 13, 2025).

Senate Republicans believe that the current policy approach would apply to the issue of whether additional deficits are produced outside the budget window, thus allowing a permanent extension of the TCJA. *See* Doug Sword & Cady Stanton, *What's in a Score? Maybe the Future of TCJA*, 186 TAX NOTES FEDERAL 1499 (Feb. 24, 2025). Some commentators suggest that is not clear. *See "Current Policy Baseline" Gimmick Could Explode the Debt*, COMMITTEE FOR A RESPONSIBLE FEDERAL BUDGET (Feb. 27, 2025) ("it is unclear that Senate rules allow the use of a current policy baseline for enforcing the Byrd

Rule”), available at **https://www.crfb.org/blogs/current-policy-baseline-gimmick-could-explode-debt.**

x. **Impact of Current Policy Approach on Pay-Fors.** Pay-fors that have been suggested include retiring some of the credits in the climate provision of the 2022 Inflation Reduction Act. Like other reconciliation bills, those provisions slowly phase down to minimize the budgetary impact and avoid causing deficits outside the 10-year budget window. Using a current policy approach would assume the credits last indefinitely. Therefore, “[i]f you use a current policy baseline, the expiring provisions are going to look like they have a larger budgetary impact in the 10-year window,” according to Kyle Pomerleau, a senior fellow at the American Enterprise Institute. *Id*. Another example is that Affordable Care Act premium subsidies that expire at the end of 2025 are part of current policy. They were scored as costing $20 billion a year; allowing them to expire could be counted as a large revenue raiser compared to current policy. *See* Doug Sword, *Bye-Bye Round Numbers, Hello Rate Tweaks for Rescored TCJA Bill*, 186 TAX NOTES FEDERAL 1332 (Feb. 17, 2025).

xi. **Precedent.** Even if the current policy baseline approach could be used in the budget resolution, Republicans may be concerned that the precedent could be used by Democrats in future reconciliation acts to extend their own preferred tax credits, deductions, spending, without registering a hit to the deficit.

> [Using a current policy baseline] threatens to open a Pandora’s box of big government mischief. As recently as 2021, for example, Congress provided pandemic unemployment benefits far above historical levels, discouraging beneficiaries from working and costing taxpayers hundreds of billions of dollars, much of it in fraudulent claims, for a program scheduled to expire in *less than six months*. Imagine if Congress said, “We should ignore the CBO score of trillions of dollars to make these unemployment benefits permanent. These benefits are ‘reality’ for the people receiving them, and therefore making them permanent doesn’t actually cost anything.”
>
> That’s exactly the standard the U.S. Chamber of Commerce is endorsing and the fiscally reckless precedent it is trying to set. **Congressional Republicans must recognize that a future Democratic Congress and President will use that precedent to enact Medicare for All, the Green New Deal, and Universal Basic Income for just one year, and then come back a year later and make it all permanent at “zero cost” because, “those programs are reality.”**

Heads I Win, Tails You Lose: The Myths Behind “Current-policy Baseline,” ARNOLD VENTURES (Feb. 27, 2025) (bold emphasis added), available at **https://www.arnoldventures.org/stories/heads-i-win-tails-you-lose-the-myths-behind-current-policy-baseline**.

Similarly, the Committee for a Responsible Federal Budget argues that

> [f]uture lawmakers could simply pass a one-year policy of their choosing and then make it permanent “for free.” In an extreme case, a future Congress and Administration could implement a Medicare for All plan at the single-year cost of less than $3 trillion and then make the Medicare for All plan permanent while treating the additional $30 trillion of nine-year costs as if they are costless.

“Current Policy Baseline” Gimmick Could Explode the Debt, COMMITTEE FOR A RESPONSIBLE FEDERAL BUDGET (Feb. 27, 2025), available at **https://www.crfb.org/blogs/current-policy-baseline-gimmick-could-explode-debt.**

xii. **Tariffs.** Republican tax writers have observed that the scoring on the reconciliation bill will not acknowledge offsets from tariffs resulting from executive action because those measures are not part of the reconciliation process. *See* Stanton, *GOP Leaders Point to Impact of TCJA Expirations on Manufacturing*, 186 TAX NOTES FEDERAL 593 (Jan. 20, 2025). 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*, 185 TAX NOTES FEDERAL 2445 (Dec. 23, 2024).

(d) **Cumbersome Process.** The negotiation and implementation of a reconciliation act is a cumbersome time-consuming process. "You have to involve the [Congressional Budget Office], you have to involve the budget committees, you have to involve the [Joint Committee on Taxation] . . . they are the arbiters, and I think that's a process." Stanton & Rifaat, *Reconciliation Discord Portends Slow Movement for Tax Extensions*, 186 TAX NOTES FEDERAL 379 (Jan. 13, 2025) (statement by Jorge Castro of Miller & Chevalier, Chtd.).

(11) **One or Two Reconciliation Acts in 2025?** One reconciliation act is allowed in each fiscal year (though two reconciliation bills have never been passed in a single calendar 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 was 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. The House Republican leadership prefers a single bill with border security, defense, and tax measures all together, thinking that packaging different priorities together will make it harder for Republican dissenters to defect. House Speaker Johnson acknowledges that the razor-thin Republican majority in the House means that only a few defections from "budget-hawks" would doom any bill. Having a single bill with matters such as border security and defense included would make it harder for bitterly divided House Republicans to defect. Johnson warns his Senate colleagues: "It's a very different chamber with very different dynamics and the House needs to lead this and we're going to have success," *See* Steven Dennis, *GOP Senators Break With House Over Trump's Budget Strategy*, BLOOMBERG DAILY TAX REPORT (Feb. 5, 2025).

President Trump has expressed his preference for a single-bill approach. The Senate originally preferred a two-bill approach, and the Senate budget resolution, passed on Feb. 21, 2025, addresses only border security and defense, leaving tax issues for a later bill. But the Senate and House have resolved their differences over this issue, and the Senate will proceed with a single-bill approach as differences between the House and Senate budget resolutions are being negotiated. *See* Doug Sword, *Crapo Says Tax Package Will Be Bigger and Broader Than Expected*, TAX NOTES TODAY FEDERAL (Mar. 13, 2025).

(12) **Senate Budget Resolution.** Sen. Graham (R-SC) released the text of a budget resolution on February 7, 2025, that would address border security and defense, with a cost of $85.5 billion annually for 4 years (total of $342 billion), that would be paid for with a reduction in annual spending of up to $520 billion over four years. The bill would provide funding to finish building a border wall; increase the number of ICE officers, border patrol officers and prosecutors; strengthen the U.S. Navy; pay for "an integrated air and missile defense"; and increase domestic energy production through onshore and offshore lease sales and repealing the Biden administration's methane emissions fee. The Senate passed its budget resolution for fiscal year 2025 on Feb. 21, 2025. The resolution was approved by a vote of 52 to 48 and serves as a blueprint for reconciliation legislation focusing on border security, military spending, and energy production.

The Senate budget resolution uses a "current policy" baseline approach. See Item 2.c(10)(c)ii above. (The House uses a "current law" approach.) Leadership in the Senate has vowed not to vote for legislation that does not extend the TCJA permanently (which would require using a current policy baseline). This will lead to extensive negotiations, particularly with "budget hawks" in the House who are especially concerned with deficits and the national debt. House Budget Chairman Jodey Arrington (R-TX) has noted that "[t]here would need to be certain conditions if I even would consider [using a current policy baseline]…. But I'm certainly open." Jack Fitzpatrick & Ken Tran, *Senate, House GOP in for Fight to Make Trump Tax Cuts Permanent*, BLOOMBERG DAILY TAX REPORT (Feb. 26, 2025). Republican House taxwriters have said that much of the focus of meetings will be on maximizing the permanency of TCJA extensions. House Ways and Means Committee member Ron Estes (R-KN) seems open: "I think the big thing is we want to make as much permanent as possible, so we don't have to have these battles every so often." *See* Cady Stanton, *House Taxwriters to Start Work Despite Stalemate With Senate*, 186 TAX NOTES FEDERAL 1912 (Mar. 10, 2025).

(13) **House Budget Resolution.** The House leadership issued the initial draft of its budget resolution on February 12, 2025, that deals with taxes as well as border security, immigration, and defense. Leadership has struggled with reaching measures that are acceptable to the both the "Freedom Caucus" members (budget hawks who want to reduce spending and reduce deficits) as well as more moderate members of the Republican party.

The House passed the budget resolution by a vote of 217-215 on Feb. 25, 2025. All Republicans except Rep. Thomas Massie (R-KY) voted for the resolution, and all Democrats other than one absent party voted against the resolution. There were a number of holdouts throughout that day, including a small band of conservatives who cited concerns over deficits and spending levels and more moderate Republicans who expressed concern over potential cuts to Medicaid. At one point, holdouts were brought into a private cloakroom for "further discussions." President Trump himself began calling the holdouts.

Holdouts included Rep. Warren Davidson (R-OH), who said he "finally received assurances I needed that there will be cuts to discretionary spending," Rep. Victoria Spatz (R-IN), who referred to her call with President Trump and his commitment "to save healthcare and make it better for physical and fiscal health for all Americans … I trust his word," and Rep. Tim Burchett ((R-TN), who said President Trump "committed to me that he is going to go after the spending in a lot of these big departments." Speaker John said the calls from President Trump were "a big help." *See* Katherine Tully-McManus & Meredith Lee Hill, *House Approves 'Big, Beautiful Bill' Budget After Wild Whip Effort*, POLITICO (Feb. 25, 2025), available at **https://www.politico.com/news/2025/02/25/house-budget-republican-agenda-00206125**.

Negotiations with the Senate over some of these issues could be difficult. Some Representatives who are aggressive about cutting spending have observed that some Senators may not be as committed to spending cuts. Rep. Chip Roy (R-TX) stated "[i]f they think they're going to meaningfully shrink the spending restraint and try to juice the tax side, then I don't think that's going to go so well." *See* Doug Sword & Keith Lobosco, *House Advances Budget Plan, Setting Up Cross-Chamber Conference*, 186 TAX NOTES FEDERAL 1698 (Feb. 26, 2025).

The lone Republican holdout from voting for the resolution was Rep. Thomas Massie (R-KY), who voiced opposition to the fact the resolution would add additional deficits. Massie said "If the Republican plan passes, under the rosiest assumptions, which aren't even true, we're going to add $328 billion to the deficit this year, we're going to add $295 billion to the deficit the year after that, $242 billion to the deficit after that. Why would I vote for that?" *See* Jennifer Shutt, *House Republicans Overcome Own Members' Doubts to Push Through Sweeping Budget*, GOVERNMENT EXECUTIVE (Feb. 25, 2025), available at available at **https://www.govexec.com/management/2025/02/house-republicans-overcome-own-members-doubts-push-through-sweeping-budget/403282/**. In a pithier statement, he said "[i]t's insane. We're going to increase the deficit with this. Why would I vote for that? You can't cut taxes without cutting spending, and they're not really cutting spending." *See* Catie Edmondson, Andrew Duehren, Maya C. Miller, & Robert Jimison, *House Passes G.O.P. Budget Teeing Up Enormous Tax and Spending Cuts*, NEW YORK TIMES, Section A, p.15 (Feb. 27, 2025).

Just because representatives voted for the budget resolution does not mean they would necessarily vote for the same provisions in a reconciliation act for several reasons. First, the House members felt pressure to adopt a resolution so the House resolution would drive the process rather than having the Senate drive the process (and some representatives view the

Senate as "less fiscally responsible"). *See* Doug Sword & Keith Lobosco, *House Advances Budget Plan, Setting Up Cross-Chamber Conference*, 186 TAX NOTES FEDERAL 1698 (Feb. 26, 2025) (quoting Rep. Gregory Murphy (R-NC)). Second, they realize the passage of a budget resolution in the House is a necessary step to start the serious discussions. Representative Tim Burchette (R-TN) expressed this point of view colorfully: "It's not everything I wanted, but in this game, you're either at the table or on the menu. It's time to get at the table." *See* Katherine Tully-McManus & Meredith Lee Hill, *House Approves 'Big, Beautiful Bill' Budget After Wild Whip Effort*, POLITICO (Feb. 25, 2025), available at **https://www.politico.com/news/2025/02/25/house-budget-republican-agenda-00206125**. House Budget Committee member Rep. Chip Roy (R-TX) has made clear that his vote for the budget resolution didn't mean that support would continue in subsequent votes and his vote will be "contingent on additional crucial actions in a final reconciliation bill." Doug Sword & Cady Stanton, *Policy Fights Await Rewrite of Tax and Budget Roadmap*, 186 TAX NOTES FEDERAL 1700 (Mar. 3, 2025).

Important provisions of the House budget resolution are briefly summarized.

- Budget window: 2025-2034
- Ways and Means Committee (tax cuts): $4.5 trillion (sliding scale; will go up or down to the extent spending cuts are more than or less than $2.0 trillion; so, if spending cuts are $1.5 trillion, the tax cuts number would be cut to $4 trillion, and if spending cuts are $2.5 trillion, the tax cuts number would be increased to $5 trillion)
- Defense: $100 billion
- Homeland Security and Judiciary Committees (border and immigration enforcement): $200 billion
- Spending cuts: $2.0 trillion (Those spending cuts may impact Medicaid, Medicare, and Affordable Care Act ($880 billion), food assistance programs ($230 billion), and student loan programs ($330 billion).)
- Total of tax cuts and spending increases: $4.8 trillion (because the tax cuts are not needed for 2025, this translates to $5.5 trillion to $6 trillion of ten-year increases, see *Taking a Closer Look at the House Budget's Reconciliation Instructions*, COMMITTEE FOR A RESPONSIBLE FEDERAL BUDGET (Feb. 12, 2025))
- Uses current law approach
- Estimates the reconciliation bill will generate revenue of $2.6 trillion in macroeconomic impacts over 10 years, much larger than predicted by economists. (Economists' estimates range from $200 billion to about $400 billion, see Item 2.c(3) above; the House budget resolution estimate may include anticipated revenues from tariffs and economic growth from cutting regulations, *see* Doug Sword, *$4.5 Trillion Tax Cut Pays Largely for Itself, Budget Bill Asserts*, 186 TAX NOTES FEDERAL 1323 (Feb. 17, 2025).)
- Assumed net financial impact: $4.5 trillion for tax cuts and $300 billion for border security and defense total $4.8 trillion; to be offset by $2 trillion in spending cuts and $2.6 trillion in revenues coming from higher than projected economic growth; nets to $200 billion short of paying for itself; without the $2.6 trillion from projected economic growth, the plan results in **$2.8 trillion** added to the national debt over ten years. *See What's in the FY 2025 House Budget Resolution*, BIPARTISAN POLICY CENTER (Feb. 12, 2025), available at **https://bipartisanpolicy.org/explainer/whats-in-the-fy2025-house-budget-resolution/**. In addition, the Committee for a Responsible Budget estimates that the House bill would add **$3.4 to $4.6 trillion** of deficit increases through FY 2034 including additional interest costs. *"Current Policy Baseline" Gimmick Could Explode the Debt*, COMMITTEE FOR A RESPONSIBLE FEDERAL BUDGET (Feb. 27, 2025) available at **https://www.crfb.org/blogs/current-policy-baseline-gimmick-could-explode-debt.**

- By comparison, the budget resolution for the 2017 TCJA allowed for a deficit increase of $1.5 trillion over the 10-year budget window.
- The $4.5 trillion for tax cuts may not include any amount for SALT relief or the Trump administration's other tax cut goals (no tax on tips, overtime pay, Social Security).
- The bill estimates $2.6 trillion of revenue from economic growth. The resolution assumes GDP growth would be 2.6 percent per year for the coming decade instead of the Congressional Budget Office's 1.8 percent estimate. *See* Doug Sword, *House Budget Headed for Vote on $4.5 Trillion Tax Package*, 186 TAX NOTES FEDERAL 1321 (Feb. 17, 2025); Benjamin Page, *Understanding House Republican Estimates on Macroeconomic Benefits of Tax Cuts*, URBAN INSTITUTE AND BROOKINGS INSTITUTION TAX POLICY CENTER (Feb. 19, 2025) (the $2.6 trillion estimate would require the economy to be about 4 percent larger, but that impact far exceeds advance projections of the effects of TCJA on GDP, which were under 1 percent). The Committee for a Responsible Federal Budget has referred to the House budget's resolution's $2.6 trillion estimate of revenue from economic growth as "fantasy math." *$3 Trillion of Dynamic Feedback is Fantasy Math*, Committee for a Responsible Federal Budget Blog (Feb. 7, 2025) available at **https://www.crfb.org/blogs/3-trillion-dynamic-feedback-fantasy-math**.
- $4 trillion increase in the debt ceiling (this could be controversial; a number of Republican House members oppose raising the debt limit for ideological reasons and dozens of them have never voted to increase the debt ceiling, and Democrats are unlikely to vote for the massive tax cuts bill just to avoid exceeding the debt ceiling). "The plan still faces the buzzsaw of a GOP conference that includes debt hawks who have never voted in favor of raising the debt limit." Chris Cioffi, *'Angst' for Tax Writers After House Budget Proposal*, BLOOMBERG DAILY TAX REPORT (Feb. 13, 2025).
- Mixed messages: Freedom Caucus members say they support the budget resolution despite the deficit increases. However, a statement from Republican Study Committee Steering Group stated, "Reconciliation legislation must reduce the federal budget deficit. Our national security depends on our ability to bring about meaningful fiscal reform." *RSC Adopts Reconciliation Goal*, Republican Study Committee website (Jan. 29, 2025), available at **https://rsc-pfluger.house.gov/media/press-releases/rsc-adopts-reconciliation-goal#:~:text=%E2%80%9CReconciliation%20legislation%20must%20reduce%20the,bring%20about%20meaningful%20fiscal%20reform.%E2%80%9D**. "Republicans are going to have to square the two arguments – that tax cuts pay for themselves and that the growing deficit is a concern – in order to succeed." Doug Sword, *What to Expect From Scoring the 2025 Tax Bill*, 186 TAX NOTES FEDERAL 35 (Jan. 6, 2025).
- Much negotiation lies ahead. For example, some Republicans say they will not vote for a plan that does not include SALT deduction relief; Rep. Murphy (R-NC) says some provisions are "sacrosanct," including the §199A deduction and the doubled estate tax exemption. *See* Doug Sword, *$4.5 Trillion Tax Cut Pays Largely for Itself, Budget Bill Asserts*, 186 TAX NOTES FEDERAL 1323 (Feb. 17, 2025). Budget hawks will be demanding in negotiations (and with a very slim Republican majority, any two or three of them hold a veto power, depending on the exact margin at the time, see Item 2.c(7) above). Even so, the tide may be turning with some budget hawks:

  > On taxes, Congress is moving with much more rapidity to enact a plan than in 2017, giving businesses and individuals more lead time to adapt to looming changes.
  >
  > Trump's campaign proposals to expand breaks to end taxes on tips, overtime and Social Security, once considered wishful thinking, are even gaining momentum despite their costs.
  >
  > Last week's dramatic, down-to-the-wire vote on the $4.5 trillion House tax cut outline was a milestone in the GOP's evolution toward unity, with Trump quelling a rebellion from fiscal conservatives through a few last-minute phone conversations.

> The budget plan would add nearly $3 trillion in deficits over 10 years and raise the debt ceiling by $4 trillion. Nonetheless spending hardliners voted for the compromise.
>
> **"It's a new day,"** said conservative Ralph Norman [R] of South Carolina.

Erik Wasson, Steven Dennis, *Trump Bends Congress to His Will on Spending, Tax Cut Agenda*, BLOOMBERG DAILY TAX REPORT (March 3, 2025) (emphasis added) (Rep. Norman is one of the most conservative House members and is a member of the House Freedom Caucus).

The House budget resolution initial draft suggests it would support extension of much or all of TCJA for 10 years, but a lot of negotiation remains. The addition of other tax cuts supported by the Trump administration or the inability to cut spending by $2 trillion would mean that the TCJA cuts could only be extended for significantly less than the full 10 years (see immediately below).

(14) **Negotiations to Resolve Differences Between Senate and House Budget Resolutions.** As discussed above, the Senate has agreed to a one-bill approach that will address taxes as well as border security and defense. Additional tax provisions are being considered in addition to an extension of the TCJA. Senate Finance Committee Chair Mike Crapo (R-ID) has said "It's a bigger deal than everybody is focused on," itemizing between $800 billion and potentially several trillion dollars of tax provisions that might be added to extension of the TCJA. *See* Doug Sword, *Crapo Says Tax Package Will Be Bigger and Broader Than Expected*, TAX NOTES TODAY FEDERAL (Mar. 13, 2025). The President's tax priorities will be included, adding $300-$500 billion or up to $3 or $4 trillion of cost, depending on specific features. *Id*. In addition, Senate Republicans have suggested nearly 200 tax proposals that will be considered. Crapo named only three of them, (1) "repeal or at least reduction of the estate tax, as 'rather prominent senators' want," (2) increases to the low-income housing credit, and (3) changes to tax-favored Opportunity Zones. *Id*.

The current policy baseline issue will have an important impact on what additional items might be added: "Just how jarring the eventual price tag will be depends on whether Crapo and Senate leadership can win approval from the Senate parliamentarian – or proceed without that approval – for the reconciliation bill to be scored on a current-policy basis. *Id*.

Like the House budget resolution, the Senate is also looking at the argument that $2.6 trillion of additional revenue would be produced from economic growth spurred the package. *Id*.

(15) **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 TCJA 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*, 185 TAX NOTES FEDERAL 1471 (Nov. 18, 2024). (This is, of course, if the current law approach is used; as explained above, under a current policy approach, the deficit impact of extending TCJA tax cuts as they currently exist would be zero, with some tweaks as required by the Byrd rule).

House Ways and Means Committee Chair Rep. Jason Smith has acknowledged that even with the $4.5 trillion set aside for tax relief in the House budget resolution, that may just permit extending the TCJA and enacting other tax provisions for just eight or nine years. *See* Doug Sword, *Smith Sets Memorial Day Deadline, Airs Additions for Tax Bill*, 186 TAX NOTES FEDERAL 1910 (Mar. 10, 2025); Doug Sword, *Crapo Says Tax Package Will Be Bigger and Broader Than Expected*, TAX NOTES TODAY FEDERAL (Mar. 13, 2025).

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 Republicans 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 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 TCJA]. *Id*. (quoting Jonathan Traub of Deloitte Tax LLP).

(16) **Estate and Gift Tax Measures; Repeal Bills; Impact of Potential 2025 Legislation on Planning.** The estate and gift tax provisions do not have a big revenue impact in relation to the overall TCJA changes. Extending the estate tax measure would increase the deficit by $189 billion over ten years vs. $4.6 trillion for extending all of the TCJA. 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 extension 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, but the Republican sweep also raises the specter of possible *repeal* of the estate tax. Indeed, Senator John Thune (R-SD), the Senate majority leader, has repeatedly introduced estate tax repeal bills and initially won his Senate seat in part by running against the "death tax." He again introduced the Death Tax Repeal Act of 2025 bill on February 13, 2025. (A companion bill was also introduced as H.R. 1301 in the House.) For a summary of these bills, see Gassman, Crotty, Ketron & Farrell, *Breaking Up with the Death Tax, A Valentine's Day Update on Estate and GST Tax Repeal*, LEIMBERG ESTATE PLANNING NEWSLETTER, Archive #3182 (February 14, 2025). A difference between the Senate and House versions is the inclusion of a new §2511(c) in the Senate bill, which provides: "Notwithstanding any other provision of this section and except as provided in regulations, a transfer in trust shall be treated as a taxable gift under section 2503, unless the trust is treated as wholly owned by the donor or the donor's spouse under subpart E of part I of subchapter J of chapter 1." This rather curious provision was enacted in the Economic Growth and Tax Relief Reconciliation Act of 2001 and repealed in the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. It has been included in various other estate tax repeal bills filed beginning in 2011. For a discussion of this enigmatic provision and its inclusion in various estate tax repeal bills, see Item 16.a(1)(c) of Aucutt, Washington Update: Estate Tax Changes Past, Present, and Future (March 12, 2024) (search for the words "Section 2511(c)" for other discussions of this provision in various repeal bills) found **here** and available at **www.bessemertrust.com/for-professional-partners/advisor-insights.**

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.

(17) **Conclusion.** It is very likely that a tax reconciliation act will be passed extending the expiring individual tax cuts (including the $10 million indexed estate and gift tax exclusion amount), possibly limited to say 4-5 years. But that is not a given; significant hurdles exist, and the legislation may not be passed until late in the year (or even into early 2026). The budget impact number that is agreed to in the budget resolution will be telling as to how comprehensive and how long the extension may be.