# Tax Policy Update

**February 13, 2018**

## NUMBER OF THE WEEK: $4.4 Trillion

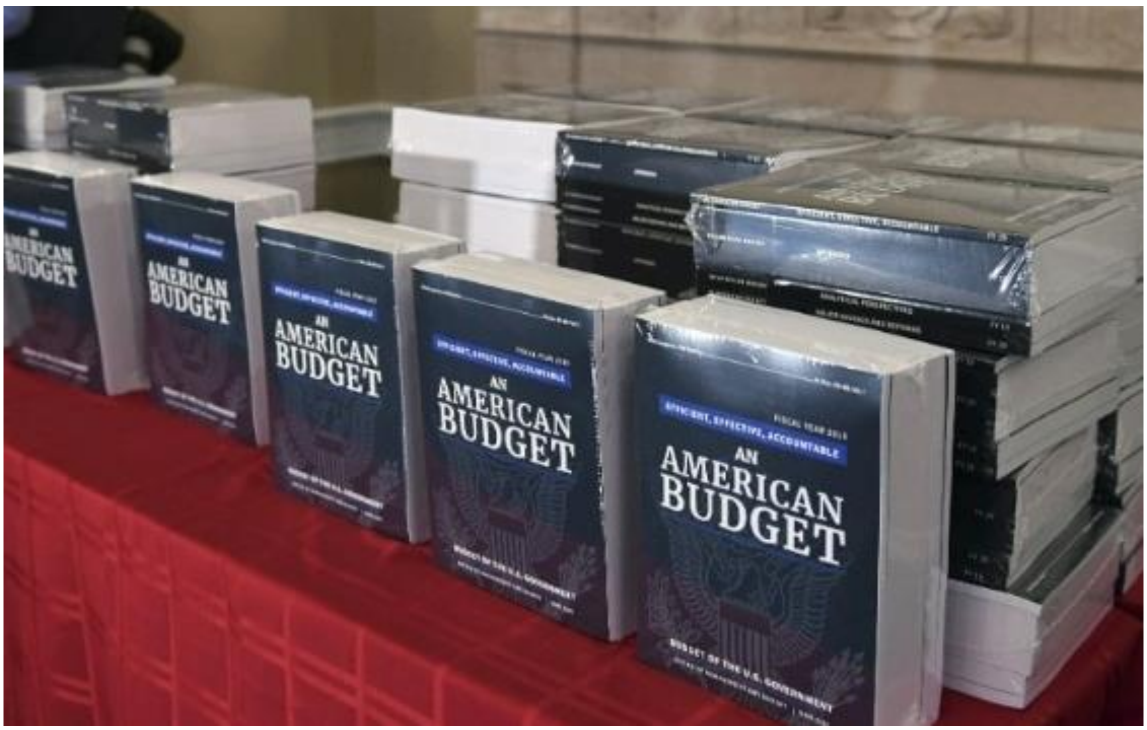


Photo: www.state.gov

The cost of President Donald Trump's budget request for fiscal year 2019.

On Feb. 12, President Trump submitted his FY 2019 budget request ("Budget") to Congress. For the second year in a row, the Treasury Department will not be issuing its "Greenbook" to accompany the budget request. The Greenbook is a document that contains detailed explanations of the tax proposals in an administration's budget request. A Treasury spokesperson explained that there won't be a Greenbook this year given the implementation of tax reform.

The Budget opens with a message from the president in which he highlights some of the administration’s successes in year one: a stronger economy, robust job creation, and the addition of nearly $5 trillion in new wealth to the stock market.

The top three priorities in the FY 2019 Budget are (1) ending wasteful spending; (2) expanding economic growth and opportunity; and (3) strengthening U.S. national security. The president also added his beloved border wall near the top of the to-do list.

Even though congressional appropriators will toss this Budget aside when they start working on their own budget blueprint and FY 2019 spending bills, there are still some key figures and policy proposals worth mentioning. Below is a quick sketch of the Budget.

Key Numbers
*(figures may not be exact due to rounding)*

**FY 2019 Total Receipts**: $3.4 trillion
**FY 2019 Total Spending**: $4.4 trillion
**FY 2019 Deficit**: $984 billion
**FY 2019 Federal Debt**: $16.9 trillion

The Budget’s policy proposals would reduce the deficit by **$4.45 trillion** in 10 years. Most of the reduction comes from the administration’s projected economic growth and cuts to both mandatory and discretionary spending **($1.8 trillion** and **$1.5 trillion** over 10 years, respectively).

Unlike previous Republican budget requests, the FY 2019 proposal does not attempt to balance the budget, which has invited the ire of House Budget Chairman Steve Womack (R-AR).

Interestingly, the Budget also assumes that the individual tax provisions in the new tax law, which are set to expire after 2025, would be extended at a cost of $600 billion.

At the departmental level, the administration requests **$12.3 billion for the Treasury Department** (a 3-percent decrease from 2017 level). The **Internal Revenue Service (IRS) would receive $11.1 billion** — most of the money would be put towards IT upgrades. And tucked away in the appendix, the Budget proposes to provide an additional $362 million for program integrity activities. The administration’s request for the IRS reflects a 6 percent decrease from 2017 levels.

Select Policy Highlights

Below is a list of top 10 policy proposals in the Budget that may be of interest to our tax policy clients. The *Tax Policy Update* team will distribute a separate write-up later this week with a more comprehensive review.

1. Private/public infrastructure investment (increases deficit by $199 billion)
2. Reform Air Traffic Control (increases deficit by $125 billion)

3. Repeal and replace Obamacare (reduces deficit by $675 billion)
4. Eliminate wasteful spending in Medicare and improve drug pricing and payment policies (reduces deficit by $236 billion)
5. Increase and extend guarantee fees charged by GSEs (reduces deficit by $25 billion)
6. Require SSNs for CTC and EITC (reduces deficit by $10 billion)
7. Restructure CFPB – reduces deficit by $6 billion
8. Increase Medicare Part D plan formulary flexibility – reduces deficit by $5 billion
9. Reauthorize the Oil Spill Liability Trust Fund excise tax – reduces deficit by $4.8 billion
10. Increase oversight of paid tax return preparers – reduces deficit by $457 million

## LEGISLATIVE LANDSCAPE

**They Made a Deal.** In the wee morning of Feb. 9, the president signed the *Bipartisan Budget Act of 2018* (H.R. 1892) into law, putting an end to the overnight government shutdown. The surprise budget deal between Republicans and Democrats will keep the federal government funded through March 23 — this should give lawmakers just enough time to produce an omnibus spending bill to fund the remainder of fiscal year 2018.

The two-year bipartisan budget deal increases the statutory caps on discretionary spending for defense and domestic programs:

- Defense caps: from $549 billion to $629 billion for FY 2018; from $562 billion to $647 billion for FY 2019.

- Domestic caps: from $516 billion to $579 billion for FY 2018; from $529 billion to $597 billion for FY 2019.

In addition, the budget deal includes:

- One-year extension of tax provisions that expired in 2016.
- Suspension of the debt ceiling through March 1, 2019.
- Extension of CHIP for an additional 4 years, bringing the total to 10 years.
- Disaster assistance totaling $89 billion.
- Increased funding for community health centers.
- Two-year delay to Medicaid Disproportionate Share Hospital payments.
- Repeal of the Independent Payment Advisory Board.

**The Amazing Life of Tax Extenders.** The *Bipartisan Budget Act of 2018* provided a one-year extension (through 2017) of 32 tax provisions at a cost of $15 billion. The list of extensions includes the following:

Renewable Energy

- Credit for nonbusiness energy
- Credit for residential energy property

- Credit for new qualified fuel cell motor vehicles
- Credit for alternative fuel vehicle refueling property
- Credit for 2-wheeled plug-in electric vehicles
- Second generation biofuel producer credit
- Biodiesel and renewable diesel incentives
- Production credit for Indian coal facilities
- Credits with respect to facilities producing energy from certain renewable resources.
- Credit for energy-efficient new homes
- Extension and phase-out of energy credit
- Special allowance for second generation biofuel plant property
- Energy efficient commercial buildings deduction
- Special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities
- Excise tax credits relating to alternative fuels
- Extension of Oil Spill Liability Trust Fund financing rate
- Modifications of credit for production from advanced nuclear power facilities

Individual

- Exclusion from gross income of discharge of qualified principal residence indebtedness
- Mortgage insurance premiums treated as qualified residence interest
- Above-the-line deduction for qualified tuition and related expenses

Miscellaneous

- Indian employment tax credit
- Railroad track maintenance credit
- Mine rescue team training credit
- Classification of certain race horses as 3-year property
- 7-year recovery period for motorsports entertainment complexes
- Accelerated depreciation for business property on an Indian reservation
- Election to expense mine safety equipment
- Special expensing rules for certain productions
- Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico
- Special rule relating to qualified timber gain
- Empowerment zone tax incentives
- American Samoa economic development credit

This list does not cover everything that's in Senate Finance Chairman Orrin Hatch's (R-UT) extenders bill (S. 2256), but another extenders package might be in play this year. The topic will come up again before lawmakers finalize the FY 2018 omnibus spending bill, which is one of the legislative vehicles targeted by the Senate tax writers.

**The Immigration Game.** The Senate will be engaged in its immigration debate throughout the week. Members are putting together a bipartisan bill on the floor via an open amendment process. Senate Majority Leader Mitch McConnell (R-KY) has put forth a “shell bill” (H.R. 2579) to kick off the process. The shell bill will serve as the legislative vehicle for the bipartisan measure.

Congress has until March 5 to come up with a solution for Dreamers whose legal status faces an uncertain future after the administration announced an end to the Deferred Action for Childhood Arrivals (DACA) program back in September 2017.

Several immigration proposals are under consideration, but the White House is insisting that its framework be used as the basis of any forthcoming bipartisan legislation. A group of GOP senators introduced a measure (*Secure and Succeed Act*) yesterday, which contains the four key policy pillars in the framework:

- 10-12 year path to citizenship for DACA recipients with requirements for work, education, and good moral character. This would cover about 1.8 million young, undocumented immigrations known as “Dreamers.”

- $25 billion trust fund for a border wall system.

- Termination of the diversity visa lottery program.

- Reform of the family-based immigration system – limiting family sponsorships to spouses and minor children.

Given that Democrats are opposed to key aspects of the administration’s proposal, the *Secure and Succeed Act* is not expected to get the 60 votes needed for passage.

**Can We Split the Check?** On Feb. 12, the White House rolled out its long-anticipated infrastructure proposal, *Legislative Outline for Rebuilding Infrastructure in America*. The president’s infrastructure plan is broken into four sections:

1. Funding and Financing Infrastructure Improvements: This section provides details on new financing and incentive programs.

2. Additional Provisions for Infrastructure Improvements: This section covers modernization efforts for highways, transit, rail, airports, waterways, and land revitalization (superfund reform).

3. Infrastructure Permitting Improvement: This section calls for streamlining and shortening the approval process for projects to two years or less.

4. Workforce Development: This section focuses on expanding access to workforce education and development programs.

The proposal aims to generate $1.5 trillion in new investments over a 10-year period. The federal government, however, would only provide $200 billion in direct spending — a sum that has left congressional Democrats unimpressed. The proposed $200 billion in federal spending is as follows:

- Infrastructure spending program – $100 billion
- Rural infrastructure program – $ 50 billion
- Transformative projects program – $20 billion
- Infrastructure financing programs – $20 billion
- Federal capital financial fund – $10 billion

It is unclear where the $200 billion would come from in the government coffer. Proposals to raise the federal gas tax have been floating around for years, but White House Legislative Affairs Director Marc Short said that the administration is not going to raise taxes to pay for its infrastructure plan. There's no doubt that the administration will rely heavily on public-private partnerships as well as individual states to help finance the country's infrastructure upgrades.

The president will welcome a bipartisan group of lawmakers to the White House on Feb. 14 to discuss the proposal.

**Tit for Tax**. President Trump proposed a new "reciprocal tax" on imports from high-tariff countries, reviving a proposal previously considered by the administration. On Feb. 12, at a White House infrastructure event, the president said that the U.S. cannot continue to let other countries "rob us blind" and charge the U.S. tariffs and taxes, while the U.S. charges nothing.

What is a reciprocal tax? It's a tax imposed on imports from countries that slap higher tariffs on U.S. exports. The average U.S. tariff is about 3.5 percent and the average trade-weighted tariff is about 2.4 percent, according to the WTO. In comparison, other countries have much higher tariffs. For example, China's average tariff is 9.9 percent and its trade-weighted tariff is 4.4 percent; Mexico's average tariff is 7 percent and its trade-weighted tariff is 4.5 percent.

The White House offered no specifics on the mechanics of a reciprocal tax on imports, instead noting that nothing formal is currently in the works.

Implementing a reciprocal tax would be no small feat – raising U.S. tariffs to equal that of other nations would require the administration to renege or renegotiate on most of the nation's trade agreements that have been place for over 70 years. Additionally, economists have long cautioned against such retaliatory tax measures, noting that tariffs generally hit consumers the hardest and make American companies less competitive.

## REGULATORY WORLD

**Regulatory Rollback: IRS Edition.** On Feb. 13, the IRS and Treasury announced a notice of proposed rulemaking that would eliminate 298 tax regulations. The move to scrap hundreds of regulations is a response to Executive Orders 13789, 13771, and 13777, which seek to identify regulations that are unnecessary, create undue complexity, impose undue burdens, and/or fail to provide clarity and useful guidance.

The regulations identified by Treasury for elimination fall into three categories:

1. they refer to parts of the tax code that have been repealed;
2. they have been substantially modified since enactment and the regulations do not currently account for the changes; and
3. they represent expired temporary provisions that are no longer applicable.

As the Treasury prepares to write regulatory guidance for the *2017 Tax Act*, the elimination of these regulations may provide some cushion as the agency must simultaneously comply with an Executive Order mandating that two regulations be identified for removal for every new rule.

**IRS Updates Priority Guidance Plan.** On Feb. 7, the IRS released its update to the 2017-2018 Priority Guidance Plan. As expected, regulators provided a list of guidance projects that they will prioritize for the implementation of the new GOP tax law:

1. Guidance on certain issues related to the business credit under §45S with respect to wages paid to qualifying employees during family and medical leave.

2. Guidance under §§101 and 1016 and new §6050Y regarding reportable policy sales of life insurance contracts.

3. Guidance under §162(m) regarding the application of the effective date provisions to the elimination of the exceptions for commissions and performance-based compensation from the definition of compensation subject to the deduction limit.

4. Guidance under §162(f) and new §6050X.

5. Computational, definitional, and other guidance under new §163(j).

6. Guidance on new §168(k).

7. Computational, definitional, and anti-avoidance guidance under new §199A.

8. Guidance adopting new small business accounting method changes under §§263A, 448, 460, and 471.

9. Definitional and other guidance under new §451(b) and (c).

10. Guidance on computation of unrelated business taxable income for separate trades or businesses under new §512(a)(6).

11. Guidance implementing changes to §529.

12. Guidance implementing new §965 and other international sections of the new tax law. PUBLISHED 01/22/18 in IRB 2018-04 as NOT. 2018-07 (RELEASED 12/29/17).

13. Guidance implementing changes to §1361 regarding electing small business trusts.

14. Guidance regarding Opportunity Zones under §§ 1400Z–1 and 1400Z–2.

15. Guidance under new §1446(f) for dispositions of certain partnership interests. TO BE PUBLISHED 02/12/18 in IRB 2018-07 as NOT. 2018-08 (RELEASED 12/29/17).

16. Guidance on computation of estate and gift taxes to reflect changes in the basic exclusion amount.

17. Guidance regarding withholding under §§3402 and 3405 and optional flat rate withholding.

18. Guidance on certain issues relating to the excise tax on excess remuneration paid by "applicable tax-exempt organizations" under §4960.

## LINE ITEMS

1. The Consumer Financial Protection Bureau unveiled its new five-year strategic plan, which reflects Acting Director Mick Mulvaney's goal to rein in the regulatory reach of the bureau. "We have committed to fulfill the Bureau's statutory responsibilities, but go no further," Mulvaney said, summarizing the essence of the revised strategic plan.

2. The House passed the *Mortgage Choice Act of 2017* – a bill that clarifies that neither escrow charges for insurance nor affiliated title charges will be considered "points and fees" for purposes of determining whether a mortgage is a "high-cost mortgage."

3. The Senate Banking Committee approved the nominations of Jelena McWilliams to be chair of the FDIC; Thomas Workman to be the insurance member of FSOC; and Marvin Goodfriend as a Federal Reserve Board member. Sen. Rand Paul (R-KY) has said that he would not support Goodfriend's nomination, which means a tough vote ahead for the nominee given the narrow Republican majority in the chamber.

4. The White House announced that President Donald Trump will nominate Charles Rettig to be the next IRS commissioner.

5. On Feb. 13, the IRS released Rev. Proc. 2018-17, which contains guidance on changes in accounting periods related to the transition tax. Specifically, the revenue procedure prevents changes to the annual accounting periods of certain foreign corporations in 2017 under existing automatic or general procedures if the change could result in the avoidance, reduction, or delay of the transition tax. The Treasury provided initial guidance on computing the transition tax in Notices 2018-07 and 2018-13.

## COMMANDER-IN-TWEET

**Donald J. Trump** @realDonaldTrump

Follow

4.2 million hard working Americans have already received a large Bonus and/or Pay Increase because of our recently Passed Tax Cut & Jobs Bill....and it will only get better! We are far ahead of schedule.

11:15 AM - 11 Feb 2018

**23,748** Retweets **115,985** Likes

24K 24K 116K

## IN THE QUEUE

### Congressional Activity

*Tuesday, 2/13*

**Senate Budget Committee**
OMB Director Mick Mulvaney to testify on the administration's FY 2019 budget request.

*Wednesday, 2/14*

**Senate Finance Committee**
Hearing on the administration's FY 2019 budget request for the Treasury Department and on the tax reform law's implementation. Treasury Secretary Steven Mnuchin to testify.

**Senate Finance Committee**
Hearing on the administration's FY 2019 budget request for the IRS. Acting IRS Commissioner and Assistant Secretary for Tax Policy David Kautter to testify.

**House Ways and Means Committee**
Hearing on the administration's FY 2019 budget request for the HHS Department. Secretary Alex Azar to testify.

**House Budget Committee**
OMB Director Mick Mulvaney to testify on the administration's FY 2019 budget request.

**House Financial Services Committee**
Subcommittee hearing on legislative proposals regarding derivatives.

**House Financial Services Committee**
Subcommittee hearing on data security and breach notification.

*Thursday, 2/15*

**House Financial Services Committee**
Subcommittee hearing on "Examining De-risking and its Effect on Access to Financial Services."

**House Financial Services Committee**
Subcommittee hearing on "Exploring the Financial Nexus of Terrorism, Drug Trafficking, and Organized Crime."

**House Ways and Means Committee**
Hearing on the administration's FY 2019 budget request for the Treasury Department. Secretary Steven Mnuchin to testify.

**Senate Agriculture Committee**
Hearing on the oversight of the CFTC, featuring CFTC Chairman Christopher Giancarlo.

**Senate Finance Committee**
Hearing on the administration's FY 2019 budget request for the HHS Department. HHS Secretary Alex Azar to testify.

**<u>Other Activity</u>**

*Monday, 2/12*

**American Enterprise Institute**
A discussion on cryptocurrencies and blockchain.

*Tuesday, 2/13*

**Tax Policy Center**
A discussion of the new business tax landscape.

*Wednesday, 2/14*

**American Enterprise Institute**
Discussion with Alan Greenspan titled, “The bubble economy – is this time different?”
**Hudson Institute**
Discussion on the Trump Administration’s global economic agenda with Under Secretary of the Treasury for International Affairs David Malpass.

*Thursday, 2/15*

**Economic Club of Washington**
Event with Brian Moynihan, CEO of Bank of America.

---


**Russell Sullivan**
Partner
rsullivan@mcguirewoods.com

**Harold Hancock**
Partner
hhancock@mcguirewoods.com

**Lai King Lam**
Assistant Vice President
llam@mwcllc.com

**Anne C. Starke**
Research Associate
astarke@mwcllc.com

**Rosemary Becchi**
Partner
rbecchi@mcguirewoods.com

**Charlie Iovino**
Vice President
ciovino@mwcllc.com

**Radha Mohan**
Assistant Vice President
rmohan@mwcllc.com

**Daniel Chung**
Associate
dchung@mcguirewoods.com