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Tax Policy Update

May 8, 2018

QUOTE OF THE WEEK

Photo: Reuters/Joshua Roberts

"There is still a lot of thinking on the right that if big corporations are happy, they're going to take the money they're saving and reinvest it in American workers. In fact they bought back shares, a few gave out bonuses; there's no evidence whatsoever that the money's been massively poured back into the American worker."

- Sen. Marco Rubio (R-FL)
  Interview with *The Economist*, April 26, 2018

Sen. Rubio handed Democrats a political messaging gift in his recent interview with *The Economist*, in which he took a detour from the GOP's talking points on the new tax law. Rubio's office quickly went into damage control after the publication of his remarks. In a May 2 National Review op-ed, titled "Two Cheers for Corporate Tax Cuts," Rubio tempered his earlier comments, saying that "[o]verall, the Republican tax-cut bill has been good for Americans…. But it could have been even better for American workers and their families."

Read the full text of Rubio's "sorry, not sorry" op-ed here. And…just to stir the pot some more, here's the clapback from Rep. Erik Paulsen (R-MN).

LEGISLATIVE LANDSCAPE

Stop Trying to Make Fetch Happen. It's Not Going to Happen. House Ways and Means Committee Chairman Kevin Brady (R-TX) is insisting that a second round of tax cuts (dubbed "Tax Cuts 2.0") is a real thing. If Brady's recent statements to reporters were to be taken seriously, Tax Cuts 2.0 would involve more than just making permanent the individual tax cuts enacted in 2017. The chairman is reportedly looking to include provisions that would make it easier for businesses to provide tuition assistance to workers; encourage Americans to save for retirement (*Retirement Enhancement and Savings Act of 2018*); increase access to health savings accounts; and provide technical corrections. The chairman has not committed to a timeline for the bill introduction of Tax Cuts 2.0

As the *Tax Policy Update* team has said before, Tax Cuts 2.0, despite Brady's enthusiasm, is nothing more than a political messaging exercise for the GOP ahead of the midterm elections. Even if such a bill could clear the House, it would not get far in the Senate without Democratic support — Republicans can't rely on budget reconciliation procedures again to force it through the chamber, given that Congress is not expected to agree on a budget resolution this year.

To be fair, Republicans are well aware that Tax Cuts 2.0 has little chance of getting to the president's desk this year, but that doesn't mean they can't force their Democratic colleagues to take a tough vote this summer.

With Great Power Comes Low Expectations. The White House is expected to send its rescissions request to Congress this week. The package of proposed spending cuts will fall short of the ambitious $60 billion figure that was being tossed around at the outset.

Based on early news reports, the size of the cuts could land anywhere between $11 billion to $15 billion. In addition, the rescissions will *not* go after the funds approved in the $1.3 trillion omnibus for FY 2018.

Instead, the administration will target unused funds that were appropriated in previous years — a sign that officials have caved to the GOP congressional leaders who warned that any attempts to go back on the omnibus deal would poison the well for future budget and spending negotiations with Democrats.

Once Congress receives the rescissions package, lawmakers will have 45 days to take action — only a simple majority is needed in both chambers for approval. The fate of this more modest proposal is unclear, as GOP leaders have given no indication whether they would support it.

Rettig's Tour of Duty. Charles Rettig, President Trump's nominee for IRS commissioner has started meeting with members of the Senate Finance Committee. Sen. Chuck Grassley (R-IA) said he saw no issues with the nomination but would not make any final decisions until after Rettig's hearing.

A nomination hearing has not yet been scheduled, though Chairman Hatch has indicated that he hopes to process Rettig's nomination "in short order." In the meantime, stakeholders are slowly beginning to coalesce around Rettig. The National Association of Enrolled Agents (NAEA) announced its support for Rettig, noting that he is the right candidate to address issues facing the agency.

Keeping Up with Hensarling. The Senate's bipartisan banking bill (S. 2155) has been stuck in the House since clearing the Senate on March 14 due to House Financial Services Chairman Jeb Hensarling's (R-TX) insistence on adding more amendments. However, it looks like the chairman is finally ready to yield, allowing the bill to proceed to a floor vote. In a face-saving gesture, Hensarling said that he would be open to moving additional provisions via a separate bill. A floor vote in the House has not yet been scheduled, but House Majority Leader Kevin McCarthy (R-CA) indicated that a vote could take place by the end of May.

Take It with a Grain of SALT: Jersey's Tax Workaround. On May 4, New Jersey Governor Phil Murphy signed into law a provision that attempts to bypass the GOP tax law's cap on the state and local tax deduction (SALT), which imposes a $10,000 federal limit on state and local tax deductions. The idea was first proposed by Rep. Josh Gottheimer (D-NJ).

Specifically, the provision would allow municipalities to establish charitable funds and give donors property tax credits in exchange for their contributions, which are still fully deductible. This is essentially a roundabout way of allowing residents to retain the tax benefits of the property tax deduction.

New York was the first state to enact this type of provision in response to the GOP's cap on the SALT deduction. Lawmakers in several other states, including Illinois, are considering similar workarounds.

Interestingly, 33 states, including several GOP-led states, already have provisions in place that allow residents to receive a dollar-for-dollar reduction in taxes in exchange for charitable contributions to certain funds.

Of course, the IRS will have final authority to determine whether donations to these funds constitutes a charitable contribution. Acting Commissioner David Kautter has noted that contributions will only qualify for tax deductions if the donative intent was *truly* charitable. This might require the IRS to review existing provisions in other states that essentially allow residents to do the same thing as New Jersey's new law. Several experts expect the IRS to rule against the new law, leading Democrats to consider the possibility of a lawsuit.

It Be Ya Own. The GOP tax law is getting some bad PR thanks to critical comments from among its own rank: Both Sen. Marco Rubio and Former Health and Human Services Secretary walked back comments critical of the GOP's legislative accomplishment.

In Price's case, at a World Health Care Congress, he noted that repealing the *Affordable Care Act's* individual mandate as part of the GOP's tax bill would cause younger and healthier individuals to leave the market and lead to major price hikes, hurting the overall vitality of the exchanges.

Price was forced to issue a clarification noting that repealing the individual mandate was the correct decision and that the only way to bring down healthcare costs is to create more choice in the market for consumers and small businesses.

The Fast and the Furious: FY 2019 Appropriations. House Republicans are determined to take a separate vote on each of the 12 appropriations bills for FY 2019. At least, that's the tentative plan after the GOP caucus meeting last week.

At this time, there is no solid strategy on how to actually get all 12 annual spending bills through both chambers before the end of the fiscal year on Sept. 30. (*Pssst…they won't get it done in time and will have to rely on temporary spending patches. Because it's Congress.*)

That said, the House Appropriations Committee is making an effort this week to get things moving with some easy FY 2019 markups: (1) Energy-Water; (2) MilCon-VA; and (3) Commerce, Justice, and Science. These three spending bills, along with the one for the Legislative Branch, will likely be the first ones to land on the House floor.

Meanwhile, the Senate is chugging along at its own pace with a series of hearings this week on the administration's FY 2019 budget requests. Unlike the House, the Senate will try to forge a bipartisan path forward on spending.

REGULATORY WORLD

Say What You Need to Say. On April 27, the Department of the Treasury (Treasury) and the IRS issued a request for public comment on the 2018-2019 Priority Guidance Plan. The priority guidance plan is an annual exercise through which federal regulators work with the public to identify the most urgent tax issues that need to be addressed through guidances or regulations.

It should be no surprise that for the 2018-2019 plan year, regulators will continue to focus predominately on guidance related to the implementation of the *Tax Cuts and Jobs Act*. As of May 2018, the Treasury and IRS have issued a series of notices announcing their intent to provide further guidance on some of the most complicated provisions in the new tax law, including:

- Notice 2018-23: Transitional Guidance re: fines and penalties
- Notice 2018-26: Additional Guidance on Deemed Repatriation
- Notice 2018-28: Initial Guidance on Net Interest Expense Deductibility
- Notice 2018-29: Guidance on Partnership Withholding

Tax practitioners are still waiting for clarification on other key components of the GOP tax law, such as the Base Erosion and Anti-abuse Tax (BEAT), Foreign Derived Intangible Income (FDII), and Global Intangible Low Tax Income (GILTI), among others.

Fake Filings on the Rise. Identity thieves continue to become increasingly sophisticated. The IRS noted an increase in fake filings for C corporations, S corporations, partnerships, and returns from trusts and estates. Forms 1120, 1120S, 1041, and Schedule K-1 are all affected by the rise in fraud.

Cybercriminals are using stolen Employer Identification Numbers (EINs) to file fake returns. The IRS has asked businesses to contact the IRS if extension requests were denied because of duplicate EIN numbers or if they receive tax transcripts or other notices from the IRS that they did not request.

Proposed EU-Digital Tax Could Mean Major Tax Hike for US Companies. The European Commission recently proposed a 3-percent tax on turnover for companies with EU digital revenues over €50 million and total global revenues over €750 million. Over 50 percent of the affected companies would be American. This is an attempt by the EU to combat base erosion and profit shifting by digital companies that often don't have a physical presence in many jurisdictions. Many of these companies allocate income to low-tax jurisdictions to lower their effective tax rates, making it difficult for traditional businesses to compete.

France has been leading the push for a new EU digital tax, but countries like Ireland, Luxembourg, and the Netherlands remain skeptical. The topic is expected to be discussed at length at the next 35-nation OECD June 4-5 summit.

LINE ITEMS

1. In a May 1 letter, House Ways and Means Ranking Member Richard Neal (D-MA) urged the Treasury and the IRS to provide guidance on the 20-percent pass-through deduction. Neal underscored the importance of clarifying the provision to help small businesses comply with the law and to prevent abuse.

2. The IRS unveiled the Tax-Exempt Organization Search (TEOS) on May 7, which will give the public access to a range of information on tax-exempt organizations. Read more here.

3. The House passed, 393-13, its 2018 FAA reauthorization bill (H.R. 4). The measure is now awaiting action in the Senate. Senate Commerce, Science, and Transportation Committee Chairman John Thune (R-SD) would like to get the five-year reauthorization measure across the finish line before August recess.

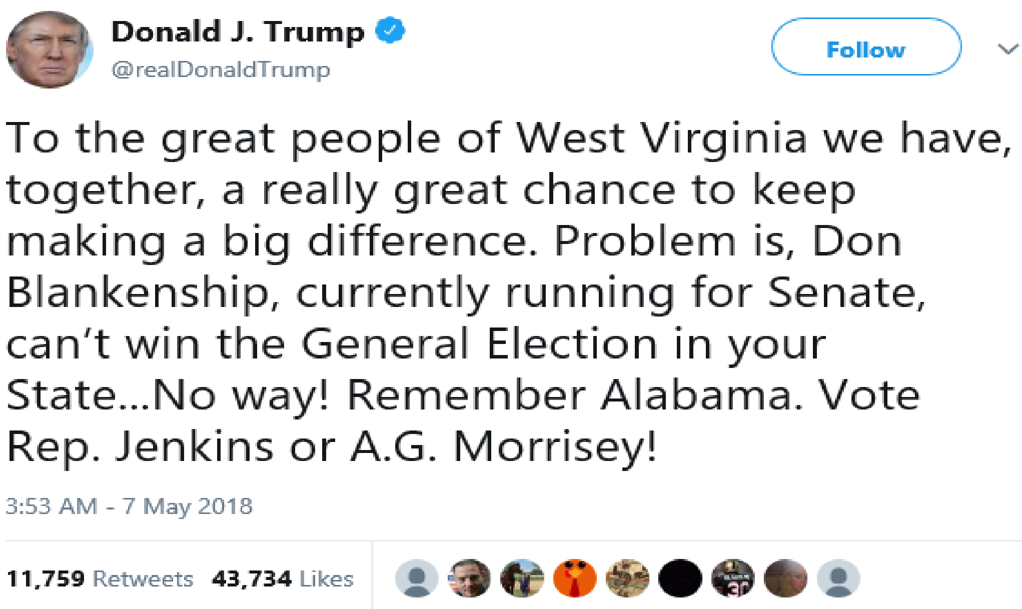
4. On April 30, Thomas Hoenig stepped down as vice chairman of the Federal Deposit Insurance Corporation (FDIC), ending his six-year term at the agency.

5. On May 1, the Congressional Research Service issued its report on select international tax provisions in the new tax law. The report discusses issues related to deemed repatriation, GILTI, FDII, and BEAT, among others.

6. Rep. Steve Scalise (R-LA) introduced a resolution ([H.Con.Res. 119]) expressing the sense of Congress that a carbon tax would be detrimental to the U.S. economy.

7. New Hampshire became the fourth GOP-led state to impose a Medicaid work requirement. In order to maintain Medicaid coverage, able-bodied adults between 19 and 64 years of age must work at least 100 hours per month. Kentucky, Indiana, and Arkansas have also enacted similar rules.

COMMANDER-IN-TWEET


Donald J. Trump
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To the great people of West Virginia we have, together, a really great chance to keep making a big difference. Problem is, Don Blankenship, currently running for Senate, can't win the General Election in your State...No way! Remember Alabama. Vote Rep. Jenkins or A.G. Morrisey!

3:53 AM - 7 May 2018

11,759 Retweets 43,734 Likes

IN THE QUEUE

<u>Congressional Activity</u>

Tuesday, 5/8

House Science, Space, and Technology Committee
Subcommittee hearing on blockchain technology and how to improve supply chain management and combat counterfeit goods.

House Ways and Means Committee
Subcommittee hearing on the "Medicare Advantage Program."

Wednesday, 5/9

House Ways and Means Committee
Subcommittee hearing on "Jobs and Opportunity: Legislative Options to Address the Jobs Gap."

Senate Foreign Relations Committee
Subcommittee hearing on "A Multilateral and Strategic Response of International Predatory Economic Practices."

Agency Activity

Thursday, 5/10

SEC
Fifth Annual Conference on Financial Market Regulation.

Other Activity

Wednesday, 5/9

AEI
Discussion on community banking in the 21st century with Rep. Blaine Luetkemeyer (R-MO).

Peterson Foundation
2018 Fiscal Summit: Debt Matters. The summit will reiterate the need for a fiscal reset.

American Bar Association
Discussion on the Internet of Things with special guest Sen. Mark Warner (D-VA) and more.

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