McGUIREWOODS

McGUIREWOODS CONSULTING Public Affairs Solutions

CELEBRATING 20 YRS

Tax Policy Update

June 19, 2018

VOTE OF THE WEEK: IMMIGRATION

All eyes will be on the House this week as members prepare to take up two bills to reform the U.S. immigration system and address the fate of DACA recipients (so-called "Dreamers).

Source: http://www.mcgregorfirm.com/immigration-political-cartoons

First up will be Rep. Bob Goodlatte's (R-VA) *Securing America's Future Act* (H.R. 4760), a measure that would, among other things, give Dreamers legal status but no pathway towards citizenship. The bill is expected to fail.

The second vote will be on a compromise bill, the *Border Security and Immigration Reform Act*, drafted by House Republicans, which adheres to the White House's immigration framework. The legislation would offer Dreamers a pathway towards citizenship, eliminate the diversity visa lottery program, provide funding for the border wall, and limit family-based immigration. According to Speaker Paul Ryan (R-WI), the compromise bill would also end the policy of family separation. However, some immigration experts have contended that the draft bill does nothing to address the widely excoriated practice of separating children from their parents at the border. At this writing, passage of the compromise bill is a toss-up.

President Trump is expected to meet with House Republicans on June 19 to discuss the immigration votes and affirm his support for their efforts.

LEGISLATIVE LANDSCAPE

Another Tax-Cut Summer Coming. Tax Reform 2.0 may get a summer release according to House Ways and Means Chairman Kevin Brady (R-TX). Brady said that GOP members of his tax-writing committee have been meeting regularly to discuss the forthcoming package — the centerpiece of which will focus on making permanent the individual tax cuts enacted in 2017. The price tag for permanency has been estimated to cost anywhere between $600 billion and $700 billion.

Brady's plan is to circulate draft legislation in July so that the House GOP caucus can review the proposals before official bill introduction. In addition to extending tax cuts, the package may also include provisions addressing retirement savings and education benefits. The goal is to get legislation out before the August recess.

Tax Reform 2.0 has little chance of surviving in the Senate, as nine Democrats would have to cross the aisle to help get it across the finish line. Still, left-leaning organizations aren't taking any chances, issuing a letter urging lawmakers to reject "round 2 of tax cuts." The June 12 letter cites cost concerns and argues that the 2017 tax cuts have disproportionately benefitted the wealthy. Signatories to the letter include 130 prominent national organizations such as the AFL-CIO, the Children's Defense Fund, and the Center for American Progress.

Cohn Solo. Former National Economic Council Director Gary Cohn sat down with *The Washington Post* on June 14 to talk tax, trade, and infrastructure. Speaking for the first time at a public event since his White House departure, Cohn shared his personal perspectives on the administration's economic policies. It took some prodding from the interviewer, but Cohn eventually conceded that the 2017 tax cuts "won't be revenue-neutral." He said that the effects could end up being revenue-negative or revenue-positive.

On trade, Cohn did not hesitate to point out the flaws of the administration's trade policy, casting a critical eye at the recently announced tariffs. In his view, tariffs will end up increasing prices for U.S. consumers, which could lead to more consumer debt, slow down the economy, and negate the much-touted benefits of GOP tax law.

When asked whether he would return to government service one day, Cohn said he was open to the idea but laughed at the question of whether he would come back to the current administration. Cohn's full interview can be viewed here.

Truck Tax Repeal. Sen. Cory Gardner (R-CO) wants to repeal the 12-percent excise on the sale of heavy-duty trucks and trailers. Gardner introduced the *Heavy Truck, Tractor, Trailer Retail Federal Excise Tax Repeal Act* (S. 3052) on June 12, saying that the "burdensome tax creates excessive costs that are passed on to truckers, who play an essential role in maintaining our nation's economy."

The 12-percent tax, the highest percentage rate of any federal *ad valorem excise tax*, can add anywhere between $12,000 to $22,000 to the purchase of a heavy truck, tractor, or trailer. According to Gardner, the high cost is a disincentive to replacing old, less environmentally-friendly vehicles.

A companion bill has also been introduced in the House (H.R. 2946) by Rep. Doug LaMalfa (R-CA) with 17 cosponsors. At this writing, the Senate bill has no cosponsors, and no hearing has been scheduled for the measure. S. 3052 is not expected to move as a standalone bill.

House Appropriations OKs FY 2019 Financial Services Spending Bill. In a 28-20 vote, the House Appropriations Committee approved the Financial Services spending bill for fiscal year 2019, covering funding for the Treasury Department, Internal Revenue Service (IRS), Securities and Exchange Commission, and other regulatory agencies. Of note, the IRS would receive $11.6 billion with $77 million going towards the implementation of the GOP tax law. Taxpayer services would receive about $2.5 billion.

The $23.4 billion spending legislation would also bring the Consumer Financial Protection Bureau under the annual congressional appropriations process. The bureau currently receives its funding from the Federal Reserve. The bill also includes an amendment that would increase funding for Community Development Financial Institutions by $25 million.

The House is expected to take up the spending bill in the coming weeks. The Senate Appropriations Committee is set to mark up its own Financial Services spending bill on June 21.

Free File Forever? When e-filing tax returns became more prevalent, the IRS created a no-cost electronic tax-filing option for low-and middle income taxpayers — the Free File program. The IRS partnered with the online tax-preparation industry and created the 12-member Free File Alliance to offer tax-preparation services to millions of Americans at no cost. The IRS agreed not to provide its own program as long as the alliance met its obligations through Free File.

The program has had a successful 15-year run, with the House voting to make the program permanent this April. The Senate is currently considering doing the same, though questions about the program's success have been raised. Theoretically, the Free File program should allow 70 percent of taxpayer prepare and file their returns at no cost. According to the IRS, over

50 million taxpayers have filed their returns for free, saving about $1.5 billion in fees, since 2003. However, according to an estimate by *ProPublica*, these returns represent about 3 percent of returns eligible for Free File.

Tim Hugo, the executive director of the Council for Electronic Revenue Communication Advancement (CERCA), believes that the low usage rates are due to a lack of consumer awareness. Hugo noted that the program has no advertising budget, and the IRS should do more to promote the program. Others, like Nina Olsen, the National Taxpayer Advocate, take a different view, noting that these companies do not want an expansion of the program. Olson also believes that the Free File sites are confusing, making it difficult for taxpayers to use these services.

As the Senate debates making the Free File program permanent, these are issues that it will contend with. Sen. Elizabeth Warren (D-MA) has already proposed an alternative "return free" filing option, noting that it shouldn't be this hard for Americans to file their taxes.

REGULATORY WORLD

Kraninger to CFPB. The White House announced over the past weekend that the president will nominate Kathy Kraninger to serve as the next director of the Consumer Financial Protection Bureau (CFPB). Little is known about Kraninger, currently an associate director who oversees the budget of the Department of Homeland Security at the Office of Management and Budget (OMB). She works closely with OMB Director and Acting CFPB Director Mick Mulvaney.

Kraninger has previous Capitol Hill experience, having worked for the House and Senate Appropriations Committees. Her nomination is widely viewed as a placeholder, allowing Mulvaney to extend his stay as acting director of the CFPB beyond the June 22 deadline. Based on federal rules under which Mulvaney was appointed to the bureau, he would have had to vacate the post on June 22 unless the president named a replacement.

The confirmation process is expected to be a rough one for Kraninger given her apparent lack of experience in consumer financial regulation. If confirmed, however, she is expected to continue Mulvaney's policies at the bureau.

No official timeline has been offered for Kraninger's confirmation, but Sen. Elizabeth Warren (D-MA), a staunch defender of the CFPB and member of the Senate Banking Committee, is planning to put a "hold" on Kraninger's nomination over questions about her role in the development and implementation of the administration's policy of separating families at the border.

Taxpayers Continue to Stick It to the IRS. Despite the IRS's warning that workarounds in response to the GOP's State and Local Tax deduction cap will be heavily scrutinized, creative tax planning strategies continue to emerge. The latest proposal involves putting homes into limited liability companies (LLC) in no-tax states like Alaska or Delaware, and subsequently turning the interests in the LLC over to a trust. Each trust can take a maximum $10,000 deduction, allowing those with multiple properties to circumvent the tax cap. The only caveat is that for those with dozens of properties, it is burdensome to set up several trusts.

Opportunity Comes Once in a Lifetime. On June 14, the Treasury Department and the IRS announced the final round of Opportunity Zone designations for four additional states. The program has now designated areas in all 50 states, Washington, D.C., and five U.S. territories.

The 2017 tax law created Opportunity Zones (OZ) to draw investment to certain economically disadvantaged urban and rural areas. The law outlines special tax incentives, including exclusions from capital gains taxes, for OZ-investors.

In order to take advantage of OZs, an investment vehicle, known as an Opportunity Fund (OF), must be created by the individual or business and organized as a corporation or partnership. The Opportunity Funds must be used for the purpose of investing and must hold at least 90 percent of its assets in qualified OZ property.

Qualified Opportunity Funds are determined by the Community Development Institutions Fund (CDIF) within the Treasury Department. The process for allocations OFs is similar to that used by the New Markets Tax Credit to certify community development entities.

According to the Treasury Department, nearly 35 million Americans live in the communities designated as OZs. These areas have an average poverty rate of over 32 percent, compared with the national average of 17 percent.

Treasury and the IRS recently released Opportunity Zones Frequently Asked Questions to provide additional information on the program. More guidance is expected to be released in the coming months.

A full list of designated OZs is available here.

International Tax Guidance to Debut by Year End. According to Carol Tan of the IRS, proposed regulations for the international provisions of the GOP tax law will be complete before the end of the year. In order for final regulations to be retroactively applicable starting on Jan. 1, 2018, all regulations must be finalized within 18 months of enactments or June 2019. The IRS hopes to give the public at least six months to comment on proposed regulations, leaving them with a December 2018 deadline to issue proposed guidance on the GILTI, FDII, BEAT, and other provisions.

INTERN-VENTION

It’s summertime and that means McGuireWoods has welcomed a new crop of interns. Many thanks to **Rebecca Harbison** for her contribution below to this week’s *Tax Policy Update*.

MEP! MEP! On June 13, the Joint Select Committee on Solvency of Multiemployer Pension Plans conducted a hearing on “Employer Perspectives on Multiemployer Pension Plans (MEPs).” Expert witnesses, representing small and large businesses, detailed the threats posed by potential withdrawals from MEPs and increases in contribution requirements. They explained that the pressure of increased contributions and withdrawal liability could lead businesses to bankruptcy, causing job losses and ripple effects to the entire economy.

The hearing also examined the pros and cons of providing low-interest federal loans to distressed MEPs — a solution supported by the majority of the witnesses and several Democratic members. Republicans appeared dubious about such loans, noting that they would needlessly place taxpayers at risk. They suggested an alternative solution that would combine key features of the defined benefit and defined contribution plans.

Committee members and witnesses agreed that the MEP crisis requires legislative action. While lawmakers are open to all potential solutions, Republicans and Democrats seem to disagree on the scope of the government’s role in addressing the crisis — namely, whether taxpayer money should be put on the line.

LINE ITEMS

1. The IRS has announced a public hearing for August 21 on the proposed regulations on partnership disguised sale rules. These regulations would replace the existing temporary and final regulations that were in effect prior.

2. Marc Short, legislative affairs director for the White House, will step down in mid-July. No immediate reason was given for the departure.

3. Will Davis, former tax policy counsel for Rep. Tom Reed (R-NY), has accepted a position with Capitol Tax Partners. He will start at the firm in July as a partner.

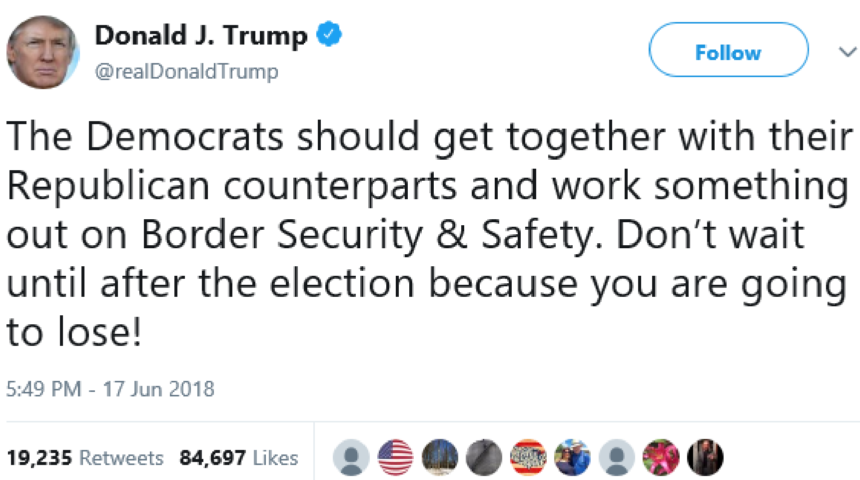
4. The Senate is ready to tackle its first FY 2019 spending package the week of June 18. The "minibus" (H.R. 5895) covers funding for Energy-Water, Legislative Branch, and Milcon-VA.

5. A bipartisan group of House and Senate lawmakers introduced the *Historic Tax Credit Enhancement Act* (S. 3058/H.R. 6081), a bill that would eliminate the existing basis-adjustment requirement, bringing the tax credit in line with other tax credits claimed over multiple years, including the Low-Income Housing Tax Credit.

6. On June 19, the Trump Administration finalized regulations that will make it easier for businesses to form association health plans (AHPs). The latest set of rules are part of the administration's efforts to circumvent the *Affordable Care Act*'s consumer protections and benefit requirements in order to provide cheaper and less robust coverage options for consumers.

7. The nonprofit sector is starting to feel the fallout from the GOP tax law. According to a report from the American Enterprise Institute, charitable giving is expected to go down by about $17 billion or 4 percent. Most of this reduction is due to changes to the standard deduction.

COMMANDER-IN-TWEET



Source: Twitter

IN THE QUEUE

Congressional Activity

Tuesday, 6/19

Senate Appropriations Committee
Subcommittee markup on the FY 2019 Financial Services spending bill.

Wednesday, 6/20

Senate Finance Committee
Hearing on "Current and Proposed Tariff Actions Administered by the Department of Commerce." Secretary Ross to testify.

Senate Finance Committee
Subcommittee hearing on trade and commerce at U.S. ports of entry.

House Ways and Means Committee
Subcommittee hearing on "IRS and U.S. Department of Justice Efforts to Return Taxpayers' Seized Funds."

House Financial Services Committee
Hearing on "Empowering a Pro-Growth Economy by Cutting Taxes and Regulatory Red Tape."

House Financial Services Committee
Subcommittee hearing on the illicit use of virtual currency.

Thursday, 6/21

House Financial Services Committee
Hearing on the oversight of the SEC. Chairman Clayton to testify.

Agency Activity

Tuesday, 6/19

FHFA
Webinar on new rule related to capital requirements for Fannie Mae and Freddie Mac.

Other Activity

Tuesday, 6/19

DC Bar
Discussion on the SEC's Regulation Best Interest rule.

AEI
Conversation with OIRA Administrator Neomi Rao on "Assessing the Administrative State."

SIFMA
SIFMA co-hosts the 2018 Prudential Regulation Conference with The Clearing House, featuring remarks from Senate Banking Committee Chairman Mike Crapo (R-ID), and many more.

Wednesday, 6/20

DC Bar
Exempt Organizations Lunch Series: Webinar on UBIT issues.

Thursday, 6/21

DC Bar
Discussion on Section 232 tariffs.

For more information on how to subscribe to the *Tax Policy Update*, please contact the editors below:

Lai King Lam, llam@mwcllc.com
Radha Mohan, rmohan@mwcllc.com

McGuireWoods Tax Policy Group:

Russell Sullivan
Partner
rsullivan@mcguirewoods.com

Rosemary Becchi
Partner
rbecchi@mcguirewoods.com

Harold Hancock
Partner
hhancock@mcguirewoods.com

Charlie Iovino
Vice President
ciovino@mwcllc.com

Lai King Lam
Assistant Vice President
llam@mwcllc.com

Radha Mohan
Assistant Vice President
rmohan@mwcllc.com

Daniel Chung
Associate
dchung@mcguirewoods.com