

**Client Alert**

*Brownstein Client Alert, May 24, 2019*

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**Tax Tidbit**

For the House Ways and Means Committee, the word of the month was “bipartisanship,” with the committee passing both bipartisan IRS reform and retirement savings legislation in April. Both bills were originally drafted when Republicans controlled the House. However, with the Senate Finance Committee’s announcement on the creation of six working groups to explore long-term solutions to temporary tax breaks known as extenders, the House’s bipartisan streak may be over. While tax extenders legislation is a bipartisan priority in the Senate, some House Democrats are reluctant to enact what they characterize as corporate giveaways, without payfors and incentives for working families. The formation of the Senate task forces puts some pressure on Ways and Means Democrats to reach a consensus on how to address the issue.

The Senate task forces will consider potential options for the future of extenders by dividing and conquering the areas of employment and community development; health; energy; cost recovery; individual, excise and other expiring policies; and disaster tax relief. The chart below provides a snapshot of the Senate Finance Committee members on each team.

	<b>Employment &amp; Community Development</b>	<b>Health</b>	<b>Energy</b>	<b>Cost Recovery</b>	<b>Individual Excise &amp; Other Expiring Policies</b>	<b>Disaster Tax Relief</b>
<b>Republican Co-Lead</b>	 Rob Portman	 Pat Toomey	 John Thune	 Mike Crapo	 Pat Roberts	 Richard Burr
<b>Democratic Co-Lead</b>	 Maria Cantwell	 Bob Casey	 Debbie Stabenow	 Ben Cardin	 Bob Menendez	 Michael Bennet
<b>Members</b>	Tim Scott	Michael Enzi	Pat Roberts	Todd Young	Steve Daines	Johnny Isakson

James Lankford  
Todd Young  
Ben Cardin  
Sherrod Brown  
Catherine Cortez Masto

Mark Warner

John Cornyn  
Bill Cassidy  
Tom Carper  
Sheldon Whitehouse  
Maggie Hassan

Catherine Cortez Masto

Maggie Hassan

Maria Cantwell

The formation of the task forces follows the release of Tax Extender and Disaster Relief Act (S.617), introduced by Senate Finance Committee Chair Chuck Grassley (R-IA) and Ranking Member Ron Wyden (D-OR) that would retroactively renew 29 expired business and individual tax extenders through the end of the year. The task forces are charged with finding long-term solutions to the extenders, which have historically been renewed every few years, but the temporary nature creates uncertainty for businesses.

## Legislative Lowdown

**Much Ado About Nothing.** On May 16, House Ways and Means Committee Chair Richard Neal (D-MA) released the text for a Manager's Amendment to the committee-passed *Setting Every Community Up for Retirement (SECURE) Act*.

The Manager's Amendment:

- Incorporates the Gold Star Family Tax Relief Act, which would shield military survivor benefits received by children from a 37% tax.
- Repeals the higher estate or trust level tax rate on Indian tribal government distributions, scholarships and fellowship grants, and dividends from the Alaska Permanent Fund paid to children. The bill reverts back to the pre-Tax Cuts and Jobs Act (P.L. 115-97) rates for these provisions.
- Removes provisions that would allow 529 plan funds to be used for homeschooling and certain elementary and secondary school expenses, such as books and supplies.
- Makes technical corrections to the bill as reported and changes fees for failure to file retirement plans under the bill.

The removal of the 529 provisions on homeschooling and ancillary education expenses championed by Republicans, was in response to criticism by education unions. The bill retains tax breaks for apprenticeships and would still allow 529 plan funds to be used to repay student debt.

House leaders are expected to vote on the measure before the lower chamber adjourns for Memorial Day Recess this week. Even with these changes, the bill is expected to pass the House and then move to the Senate for consideration.

The upper chamber has its own version of the bill—the Retirement Enhancement and Savings Act (RESA) of 2019 (S.972). RESA does not include the 529 education provisions.

**Land of the Free (File).** With the Free File scandal now a few weeks old, Senate Finance Committee Chair Chuck Grassley (R-IA) has expressed an interest in advancing IRS reform legislation, the *Taxpayer First Act* (H.R. 1957). The bill codifies the Free File program, aimed at helping low-income, foreign-speaking and elderly taxpayers file their returns. Grassley indicated he would like to preserve the option for taxpayers to use Free File, especially given privacy concerns about the IRS running its own filing system. Of course, the program would still be available for taxpayer use even if the *Taxpayer First Act* does not permanently codify the

provision. Senate Finance Committee Ranking Member Ron Wyden (D-OR) has been more critical of the program, given allegations that companies like H&R Block and Intuit purposefully steer low-income taxpayers towards paid products by making it difficult to find free software through internet searches. Wyden has noted that removing the permanent codification of Free File from the *Taxpayer First Act* is an appealing option, though he was unwilling to “front-run” Grassley. The committee has not decided how to handle the Free File provision in the bill; staffers are still discussing various options.

For now, Grassley and Wyden jointly sent the IRS a letter last week demanding the agency evaluate allegations against Free File participants and the program as a whole. House Ways and Means Committee leaders also made the same request in a separate bipartisan letter to the IRS. Ways and Means Ranking Member Kevin Brady (R-TX) said he was also open to discussing changes to Free File.

**We Got You.** Sens. Rob Portman (R-OH) and Ben Cardin (D-MD) on Tuesday introduced a bipartisan retirement savings bill aimed at strengthening access to retirement savings plans for low-income individuals and small businesses. *The Retirement Security & Savings Act* (S.1431) contains over 50 provisions that would: (1) assist individuals who have saved too little for retirement; (2) make it easier for small businesses to offer retirement savings plans for employees; (3) expand retirement savings plans to include low-income Americans without coverage; and (4) ensure greater security and flexibility for individuals in retirement. Both senators cited a 2019 Government Accountability Office (GAO) report as their motivation for introducing the bill, which indicated that almost half of near retirees over the age of 55 have no retirement savings and just under one in five low-income workers participate in a retirement savings plan.

The bill’s introduction coincided with a May 14 Senate Finance Committee hearing on the retirement system. During the hearing, there was strong bipartisan support for the *Retirement Enhancement and Savings Act (RESA) of 2019* (S.972), including its nondiscrimination testing reform and expanded multiemployer pensions (MEPs) provisions. A number of senators indicated they would like to approve additional retirement legislation after passing RESA.

For more information on the Senate Finance Committee hearing, check out the last edition of *Taxation and Representation*.

## RegWatch

**IRS Guidance Backlog.** On Tuesday, the Treasury Inspector General for Tax Administration (TIGTA) identified 95 provisions enacted by the Tax Cuts and Jobs Act (P.L. 115-97) that have yet to have guidance documents produced by the Internal Revenue Service (IRS). In order for guidance to be retroactively applied to Jan. 1, 2018, IRS regulators are working under a tight June 22 deadline to publish the remaining rulemaking or risk jeopardizing their eligibility to retroactively apply these provisions. The TIGTA audit cited several factors for the delay in advancing many of the regulations, with particular focus applied to the constraints imposed by the 35-day government shutdown and unique staffing constraints at the agency. TIGTA highlighted significant progress in getting over 83 different guidances out before the end of March, but cited that “much work remains” to be done.

Assistant Treasury Secretary for Tax Policy David Kautter on Monday indicated there will be an “intense” regulatory pace the next few weeks as regulators prepare to approve some of the most prominent provisions from the TCJA. Among them include regulations for the Global Intangible Low-Taxed Income (GILTI) that were received by the Office of Management and Budget (OMB) late Friday afternoon and are expected to be completed by June 22, according to Kautter. Meanwhile, Kautter revealed that rulemaking for the following

provisions should be completed:

- Base Erosion Anti-Abuse Tax (BEAT): finalized by mid- to late summer
- W-4 Withholding Forms: draft in two to three weeks
- 1040 Tax Return Form: draft within a “couple weeks”
- State and Local Tax (SALT) Deductions: final rules in the “next month”
- Expensing: final rules by late summer
- Net Operating Losses: final rules in four to six weeks
- Income Recognition: final rules in “near future”

## 1111 Constitution Avenue

**Under The TaxScope.** On Wednesday last week, the IRS revealed a new program in its Large Business and International Division (LB&I) that will review data and examine the population of its largest and most complex taxpayers. The program will be called the Large Corporate Compliance program and replace the Coordinated Industry Case program. In the past, the IRS has used manual localized methods but the new LCC program will use “automatic application of the large case pointing criteria.” Pointing criteria will pick up on indicators such as gross receipts and gross assets and from there will pinpoint cases with the highest compliance risk.

## At a Glance

- **Treasury Rejects Tax Refund Request.** The Treasury Department passed Friday’s subpoena deadline to turn over President Trump’s tax returns to the House Ways and Means Committee, prompting a near-inevitable legal battle in federal courts. In a letter to Committee Chair Richard Neal (D-MA), Mnuchin described the lack of a “legitimate legislative purpose” for not complying with the request.
- **Mnuchin Thinks Not to Pot.** Treasury Secretary Steven Mnuchin said last week that marijuana businesses should be barred from involvement in the Opportunity Zone tax program. Mnuchin underscored that since there remains a disconnect between federal and state laws on marijuana use, it should not be eligible for the program.

## Brownstein Bookshelf

- **IRS Determination Letter Program.** Our Brownstein colleagues out west wrote an analysis describing the prospects of the Internal Revenue Service (IRS) expanding its determination letter program to include merged plans.
- **IRS Data Book.** Michael Cohn of AccountingToday outlines some of the major findings from the IRS Data Book released on Monday, including a continued decline in the IRS audit rate.

**Regulation Station**

**INTERNATIONAL**

Regulation	Latest Action	Regulation Link	Comment Countdown	Brownstein Commentary
Sec. 965 Transition Tax Correction	April 10, 2019	2019-07012 <a href="#">2019-07018</a>	N/A	
FDII and GILTI	March 6, 2019	REG-104464-18	Deadline Passed May 6, 2019	
Sec. 965 Transition Tax	Feb. 5, 2019 <b>Final Regulations</b>	84 FR 1838	Deadline Passed Oct. 9, 2018	
Certain Hybrid Arrangements	Dec. 28, 2018	REG-104352-18	Deadline Passed Feb. 26, 2019	
BEAT (Sec. 59A)	Dec. 21, 2018	REG-104259-18	Deadline Passed Feb. 19, 2019	
Foreign Tax Credit	Dec. 7, 2018	REG-105600-18	Deadline Passed Feb. 5, 2019	
Sec. 956	Nov. 5, 2018	REG-114540-18	Deadline Passed Dec. 5, 2019	
GILTI	Oct. 10, 2018	REG-104390-18	Deadline Passed Nov. 26, 2018	
GILTI	Sept. 13, 2018	Rev. Proc. 2018-48	N/A	

**199A**

Regulation	Latest Action	Regulation Link	Comment Countdown	Brownstein Commentary
Qualified Business Income Deduction (Sec. 199A) - CORRECTION	April 17, 2019	84 FR 15953	N/A	
Qualified Business Income Deduction (Sec. 199A)	Feb. 8, 2018	REG-134652-18	Deadline Passed April 9, 2019	
Qualified Business Income Deduction (Sec. 199A)	Feb. 8, 2019 <b>Final Regulations</b>	84 FR 2952	Deadline Passed Oct. 1, 2018	
W-2 Wages for Qualified Business Income Deduction	Jan. 18, 2019	Rev. Proc. 2019-11	N/A	

(Sec. 199A)				
Trade or Business Safe Harbor: Rental Real Estate (Sec. 199A)	Jan. 18, 2019	Notice 2019-07	N/A	Washington Update

## DOMESTIC BUSINESS

Regulation	Latest Action	Regulation Link	Comment Countdown	Brownstein Commentary
Interest Expense Deduction	Dec. 28, 2018	REG-106089-18	Deadline Passed Feb. 26, 2019	
Opportunity Zones	Oct. 29, 2018	REG-115420-18	Deadline Passed Dec. 28, 2018	
Debt-Equity Documentation (Sec. 385)	Sept. 24, 2018	REG-130244-17	Deadline Passed Dec. 24, 2018	
Sec. 162(m)	Aug. 21, 2018	Notice 2018-68	N/A	Washington Update
Full Expensing	Aug. 3, 2018	REG-104397-18	Deadline Passed Oct. 9, 2018	
Carried Interest	March 1, 2018	Notice 2018-18	N/A	

## EXEMPT ORGANIZATIONS

Regulation	Latest Action	Regulation Link	Comment Countdown	Brownstein Commentary
Excise Tax on Executive Compensation	Dec. 31, 2018	Notice 2019-09	N/A	
UBIT (Sec. 512(a)(7))	Dec. 10, 2018	Notice 2018-99	N/A	
Time and manner for filing and paying excise taxes	Nov. 7, 2018	REG- 107163-18	Deadline Passed Dec. 7, 2018	
UBIT (Sec. 512(a)(6))	Aug. 21, 2018	Notice 2018-67	N/A	Washington Update
Higher Education Excise Tax	June 8, 2018	Notice 2018-55	Deadline Passed Sept. 6, 2018	

**OTHER**

<b>Regulation</b>	<b>Latest Action</b>	<b>Regulation Link</b>	<b>Comment Countdown</b>	<b>Brownstein Commentary</b>
<b>Estate and Gift Taxes</b>	Nov. 23, 2018	REG-106706-18	Deadline Passed Feb. 21, 2019	
<b>Sec. 451(b) Market Discount Guidance</b>	Sept. 27, 2018	Notice 2018-80	N/A	Washington Update
<b>Safe Harbor of Eligible Rollover Distributions</b>	Sept. 20, 2018	Notice 2018-74	N/A	Washington Update
<b>SALT</b>	Aug. 27, 2018	REG-112176-18	Deadline Passed Oct. 11, 2019	Washington Update
<b>Education Savings</b>	July 30, 2018	Notice 2018-58	N/A	Washington Update
<b>Health Savings Accounts</b>	March 5, 2018	Rev. Proc. 2018-18 Rev. Proc. 2018-27	N/A	