

Taxation & Representation, March 12, 2019  
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**Client Alert**

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**IN THIS ISSUE**

- Tax Tidbit
  - What’s the Magic Number?
  - Budget Fudgeit
- Legislative Lowdown
  - Without Much Further Ado
  - Olson Farewell Tour
  - Infrastructure is Taxing
  - Think of the Children
- Global Getdown
  - Coup D’Tax
- 1111 Constitution Avenue
  - Regulations—Who Needs ‘Em?
- At a Glance
- Brownstein Bookshelf
- Regulation Station—All Aboard

**TAX TIDBIT**

**What’s the Magic Number?** There are several—on Monday, March 11, President Donald Trump submitted his FY 2020 budget request (“Budget”)—“A Budget for a Better America: Promises Kept. Taxpayers First.”—to Congress.

Key Numbers from the Budget include (figures may not be exact due to rounding):

FY 2020	Amount
FY 2020 Total Receipts	\$3.65 trillion
FY 2020 Total Spending	\$4.75 trillion
FY 2020 Deficit	\$1.10 trillion
FY 2020 Federal Debt	\$18.09 trillion

**Budget Fudgeit.** The \$4.75 trillion budget request is the largest in history. It calls for \$2.7 trillion in spending cuts over 10 years, including \$1.9 trillion in cost savings from mandatory safety net programs, such as

Medicaid, and new restrictions on access to food and housing assistance. Assuming three percent economic growth, the proposal balances the budget in 15 years, by 2034—this is a departure from the president’s FY 2019 budget, which did not attempt to balance the budget. However, in the next fiscal year, the Budget would grow the federal deficit by about \$1.1 trillion, with projected trillion dollar deficits for the following three years.

Congressional appropriators, particularly those in the Democratic-controlled House, will largely disregard the Budget when they start working on their own FY 2019 budget blueprint and spending bills. Democrats have already criticized the president’s budget, which includes a request for \$8.6 billion in funding for a barrier along the U.S.-Mexico border.

The proposal will likely set the stage for negotiations in advance of the start of the new fiscal year on Oct. 1, 2019.

**Read the analysis** from the Brownstein Tax Policy Team on a few key figures and policy proposals worth mentioning.

## LEGISLATIVE LOWDOWN

**Without Much Further Ado.** Last week, House Ways and Means member Rep. Bill Pascrell (D-NJ) revealed that House Democrats are on schedule to formally request President Trump’s personal tax returns in about two weeks. The request, as outlined by Pascrell, will not cover any of President Trump’s business filings, but will instead look for a 10-year snapshot of the president’s personal filings. Democratic lawmakers have been reviewing and discussing a 1924 law that grants authority to the chairs of Congress’ tax writing committees to examine any citizen’s confidential tax filings.

Ways and Means Committee Chair Richard Neal (D-MA) has remained noncommittal on a timeline for obtaining the returns, instead taking a very cautious approach. Across Capitol Hill, Senate Finance Committee Chair Chuck Grassley (R-IA) said that if House tax writers formally request the president’s tax returns, he will also request the returns from the IRS to ensure that the agency is not being used for political purposes.

Even if Neal requests Trump’s returns in the coming weeks, the documents are unlikely to be released anytime soon. The administration will fight the request and the Treasury Secretary will likely stall for months in the hopes that the GOP will take back the House in 2020. Furthermore, even if Democrats successfully obtain the president’s tax returns, they would be bound by strict rules on the disclosure of confidential tax information.

**Olson Farewell Tour.** Less than a week after announcing her decision to step down from her 18-year tenure as National Taxpayer Advocate, Nina Olson testified before the House Ways and Means Committee on Thursday to discuss the IRS tax filing season. In her testimony, she recommended the Treasury Department should waive all under-withholding penalties this year due to taxpayer confusion about the *Tax Cuts and Jobs Act* (TCJA). The Treasury Department has already lowered the penalty threshold over the course of 2018 to exempt individuals who paid at least 85 percent of their taxes, rather than the typical 90 percent payment requirement. Democrats have noted there is precedent for this type of relief—after the 1986 tax overhaul, under-withholding penalties were waived for a year to alleviate concerns over taxpayer confusion. In addition, Olson recommended that the IRS should: (1) simplify the Form W-4; (2) implement a “customer callback” function to help taxpayers with questions; (3) answer in-scope tax law questions throughout the entire year; (4) offer year-round assistance regarding TCJA questions for at least two years; and (5) allow taxpayers to choose between the traditional Form 1040 and simplified Form 1040 when filing their personal tax returns.

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Olson also noted that concerns over taxpayer interactions with debt collectors “will be on the list of more serious problems going forward, regardless of who is National Taxpayer Advocate.”

**Infrastructure is Taxing.** The House Ways and Means Committee jumped on the infrastructure bandwagon last week by holding a hearing entitled “Our Nation’s Crumbling Infrastructure and the Need for Immediate Action.” The hearing was comprised of two panels: first featuring House Transportation and Infrastructure Committee Chair Peter DeFazio (D-OR) and Ranking Member Sam Graves (R-MO), and second with representatives from labor, business, and industry executives. While Chair Richard Neal (D-MA) and Ranking Member Kevin Brady (R-TX) called for bipartisanship to pass a large infrastructure package, members of both parties had very different outlooks on how to fund projects. Transportation and Infrastructure Chair Peter DeFazio (D-OR) called for indexing the gas tax and investing in bonds, while the committee’s Ranking Member Sam Graves (R-MO) advocated for a vehicle miles traveled (VMT) fee as a more sustainable alternative to a gas tax increase. Republicans on the committee also focused on permitting reform, expanding public-private partnerships (P3s), and reducing Highway Trust Fund (HTF) spending on non-highway projects such as mass transit.

**Think of the Children.** Sens. Michael Bennet (D-CO) and Sherrod Brown (D-OH) reintroduced legislation last week to expand the child tax credit. The Democratic senators say their plan—the American Family Act of 2019—will increase the tax credit to \$3,600 per year for children under 6 years old and \$3,000 for children ages 6 to 17 in an effort to cut child poverty by 38 percent. The credit would be indexed to inflation and the bill would give the Treasury Department authority to send payments out monthly. The proposal would also make the tax credit fully refundable to help low-income families maximize their benefits. Right now only \$1,400 of the current \$2,000 tax break is available for refund. The child tax credit was expanded as part of the TCJA.

## **GLOBAL GETDOWN**

**Coup D'Tax.** After months of growing rhetoric and divergent public opinion throughout Europe, France became the first country on Wednesday to formally begin the steps to implement a digital revenue tax on large tech companies. The legislation was drafted and submitted to the French Parliament following comments on March 2 by French Finance Minister Bruno Le Maire indicating the tax would be levied on companies that: (1) generate at least \$850 million annually in revenue; and (2) record at least \$28.3 million of that revenue in France. With the application of the three percent tax, Le Maire stated that the government could collect \$566 million by the revenues generated from Jan. 1 alone.

Collectively, roughly 30 companies would be affected by the policy, including American giants Facebook, Google, Apple, and Amazon. The announcement follows a failed push from France for a European Union coalition in favor of the tax, but Le Maire said the country is still seeking a broad agreement throughout the Organization for Economic Cooperation and Development (OECD) on the proposal. House Ways and Means Committee Ranking Member Kevin Brady (R-TX) was quick to threaten retaliation over the proposed tax and said it would “result in double taxation and violate longstanding norms,” while directly targeting some of the largest companies in the United States.

**Regulations—Who Needs ‘Em?** The Treasury Department started off the week with a big **elimination of 296 tax regulations** that “are no longer necessary because they do not have any current or future applicability under the Internal Revenue Code.” Ever the overachiever, the agency well out-performed the “eliminate two regulations for every one enacted” rule established by President Trump’s April 2017 executive order that directed federal agencies to get rid of regulations that eliminate jobs, are ineffective or outdated, and are more costly than beneficial, among others. The Treasury Department originally intended to rollback 298 regulations, but instead elected to keep two of them, saying “they are cross-referenced in other regulations with continuing effect, and the cross references are important to the content of the other regulations.” In response to the regulation removal, five responses were submitted, one of which welcomed the proposed rulemaking.

## AT A GLANCE

- **Charting a Course.** House Democratic leadership has scheduled floor time for an infrastructure package in late spring, according to comments by Rep. Earl Blumenauer (D-OR) last Tuesday. Rep. Blumenauer noted that the “timeframe is the next 100 days” and personally pledged to oppose any funding attempts that come through a repeal of the TCJA because it would derail any potential for bipartisanship.
- **Extended Invitation.** On Tuesday, March 12, the House Ways and Means Subcommittee on Select Revenue Measures held a hearing entitled “Temporary Policy in the Internal Revenue Code.” It will be the first scheduled hearing on tax extenders in the 116th Congress, and will include testimony from three think tank academics, a tax consultant and a university president.
- **Retirement Savings Rebirth?** Staff at the Insured Retirement Institute said last week that the Retirement Enhancement and Savings Act (RESA) seems slated to be reintroduced by Senate Finance Committee Chairman Chuck Grassley (R-IA) in the coming months. The push for retirement savings legislation accelerated before the end of the 115th Congress only to get pushed aside by ongoing appropriations debates.
- **Raise the Wage.** Following a committee markup, the House Education and Labor Committee advanced to the full chamber legislation that would raise the federal minimum wage to \$15 an hour by 2025. While likely to pass the House, it seems unlikely to move forward in the GOP-controlled Senate.

## BROWNSTEIN BOOKSHELF

- **Make Way for the Statesmen.** Brownstein’s Doug Friednash wrote an **op-ed** describing the growing

importance of state governors to drive policy in the absence of a convivial U.S. Congress.

- **State of the Union.** Listen in as our Brownstein Government Relations colleagues **discuss** the implications of 2020's growing Democratic candidate field, and how Leader McConnell will use his powers to target Democratic senators seeking the nomination.
- **Ben Folds Five.** Renowned musician and advocate Ben Folds stopped by the Brownstein offices to **chat** with Policy Director Drew Littman on the importance of music and the arts in transcending partisanship in Washington.

## REGULATION STATION—ALL ABOARD

### INTERNATIONAL

Regulation	Latest Action	Regulation Link	Comment Countdown	Brownstein Commentary
Sec. 965 Transition Tax	Feb. 5, 2019 <b>Final Regulations</b>	84 FR 1838	Deadline Passed Oct. 9	
Certain Hybrid Arrangements	Dec. 28, 2018	REG-104352-18	Deadline Passed Feb. 26	
BEAT (Sec. 59A)	Dec. 21, 2018	REG-104259-18	Deadline Passed Feb. 19	
Foreign Tax Credit	Dec. 7, 2018	REG-105600-18	Deadline Passed Feb. 5	
Sec. 956	Nov. 5, 2018	REG-114540-18	Deadline Passed Dec. 5	
GILTI	Oct. 10, 2018	REG-104390-18	Deadline Passed Nov. 26	
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)	Feb. 8, 2018	REG-134652-18	28 Days	
Qualified Business Income Deduction (Sec. 199A)	Feb. 8, 2019 <b>Final Regulations</b>	84 FR 2952	Deadline Passed Oct. 1	

W-2 Wages for Qualified Business Income Deduction (Sec. 199A)	Jan. 18, 2019	Rev. Proc. 2019-11	N/A	
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	
Opportunity Zones	Oct. 29, 2018	REG-115420-18	Deadline Passed Dec. 28	
Debt-Equity Documentation (Sec. 385)	Sept. 24, 2018	REG-130244-17	Deadline Passed Dec. 24	
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	
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	
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	

**OTHER**

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

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**Related Practices**

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