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Client Alert

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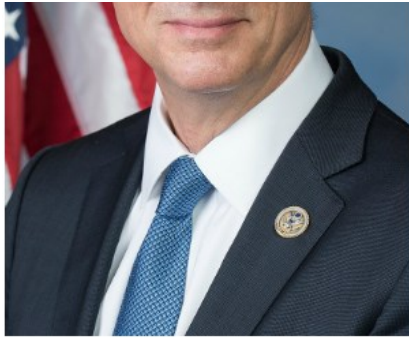
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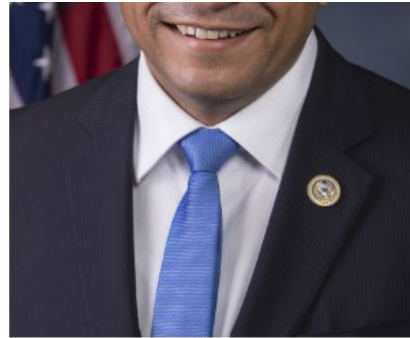
MEET THE MEMBERS

Congratulations! You have officially met all of the new faces in this session's House Ways and Means Committee. For our final installment of Meet the Members, we introduce you to the two remaining newcomers—Reps. Tom Suozzi (D-NY) and Jimmy Gomez (D-CA).





Rep. Tom Suozzi (D-NY)



Rep. Jimmy Gomez (D-CA)

Stay tuned—next week we meet the newbies on the Senate Finance Committee.

Rep. Tom Suozzi (D-NY-03). Gomez has represented California’s 34th congressional district since 2017. In Congress, he has authored landmark legislation to address public health, access to education, campaign finance disclosure, and affordable housing. Gomez voted against the *Tax Cuts and Jobs Act (TCJA)*. While he has not introduced any tax legislation, Gomez has cosponsored nine tax bills. He serves as co-chair of the House Democratic Caucus’ Rebuilding America Task Force and is a member of the Congressional Hispanic, Asian Pacific American, and Progressive Caucuses. Prior to joining Congress, Gomez served in the California State Assembly (2012-2017), where he championed legislation for paid family leave and combating climate change.

Rep. Jimmy Gomez (D-CA-34). Suozzi has represented New York’s 3rd congressional district since 2017. In Congress, Suozzi has supported lowering the corporate tax rate. Suozzi, unlike some of his Democratic colleagues, has been a critic of a single-payer healthcare system and has expressed concerns about the funding and tax implications of this model. He voted against the *Tax Cuts and Jobs Act (TCJA)*. While Suozzi has not introduced any tax legislation, he has cosponsored 14 tax-related bills. Suozzi is a member of the Congressional Asian Pacific American, International Conservation, and Climate Solutions Caucuses. Prior to joining Congress, Suozzi was trained as an attorney and Certified Public Accountant (CPA) before serving as mayor of his hometown, Glen Cove, NY (1994-2001) and as Nassau County Executive (2002-2009). In 2004, Suozzi created FixAlbany.com, which exposed and rooted out corruption in New York state politics and placed a cap on local Medicaid expenses. In 2007, he was appointed to lead a state commission that proposed the first property tax cap, which has now become law.

LEGISLATIVE LOWDOWN

EITC GAINS Momentum. Sen. Sherrod Brown (D-OH) and Reps. Ro Khanna (D-CA) and Bonnie Watson Coleman (D-NJ) rolled out the *Grow American Incomes Now Act (GAIN)* on Feb. 13. The GAIN Act would double the Earned Income Tax Credit (EITC) for working families and increase the credit for childless workers almost six-fold.

The table below outlines the maximum credit limits under the GAIN Act:

Household Type	Max Credit Under GAIN Act	Current Maximum Credit (2019)
Families with 3 or more qualifying children	\$12,349	\$6,557

Families with 2 or more qualifying children	\$10,976	\$5,828
Families with 1 or more qualifying children	\$6,370	\$3,526
Families with no qualifying children	\$3,054	\$529

In addition to increasing the maximum allowable EITC credit, the GAIN Act would also phase out the EITC at higher income levels and still remain fully refundable. It would allow workers with no children, who make up to \$38,498 annually, to remain eligible to receive the tax credit and cover a family with three or more children making up to \$78,804. The current maximum qualifying income to receive the EITC is \$15,570 for childless workers and \$55,952 for families with three or more children.

The legislation also includes language to expand the EITC to allow individuals taking care of children or aging parents to claim the credit, as well as students who are working to support themselves as they pursue their education.

The bill takes aim at the payday lending industry by offering workers an alternative in the form of an annual one-time \$500 advance on the EITC for the following taxable year.

Proposed payfors include repealing portions of the *Tax Cuts and Jobs Act*.

The EITC expansion proposal has no chance of passing a Republican-controlled Senate. The proposal is potential 2020 campaign fodder for Sen. Brown who is expected to pitch himself as a voice for the working class and the best chance Democrats have against President Trump.

Always a Bridesmaid. No “put a ring on it” for extenders again. Prior to the passage of the funding legislation last week, there was speculation that the spending package would include tax extenders. These provisions have been renewed on a temporary basis for many years. Most recently, the package of extenders was retroactively renewed for 2017 in the *Bipartisan Budget Act* of 2018. Several extenders measures were also originally included in former Chair Kevin Brady’s (R-TX) H.R.88 end-of-year 2018 tax deal, in addition to technical corrections to the *Tax Cuts and Jobs Act*. The extenders were later removed in an effort to pass technical corrections, but the package never made it to law. Tension surrounds extenders with pressure from stakeholders and uncertainty from House Democrats. Both parties in the Senate have expressed bipartisan support for extenders. Senate Finance Committee Chair Chuck Grassley (R-IA) has championed the passage of extenders and on Feb. 14 announced plans to introduce standalone legislation for extenders and disaster relief.

An Unlikely Trio. Sen. Marco Rubio (R-FL) once again broke party rank by criticizing a consequence of the *Tax Cuts and Jobs Act*—only this time, the senator isn’t backing down. Last week, Sen. Rubio released a policy agenda titled “Made in China—2025 and the Future of American Industry” as part of the Project for Strong Labor Markets and National Development, an initiative he is shepherding as chair of the Senate Committee on Small Business and Entrepreneurship.

The policy agenda includes a section that would curb incentives for companies to use excess capital to buy back shares in order to increase stock prices. The policy agenda contends that the tax-advantaged nature of share repurchases over dividends, due to the structure of capital gains taxes, are in part responsible for the prevalence of buybacks since the passage of the TCJA. To this end, Sen. Rubio suggests ending this preference and increasing the tax rate on repurchases to raise revenue to finance other incentives for capital investment like full expensing.

Sen. Rubio’s Democratic colleagues have also released proposals to curb incentives for corporate buybacks. Sen. Bernie Sanders (I-VT) and Senate Minority Leader Chuck Schumer (D-NY), recently penned a New York

Times op-ed on their proposal to discourage corporate buybacks. The Sanders-Schumer plan would set minimum requirements for corporate investment in workers and the long-term strength of a company as preconditions for corporations entering into a share buyback plan. The goal of their proposal would be to curtail the overreliance on buybacks while also incentivizing the productive investment of corporate capital.

Infrastructure—DOA? Senate Commerce Committee Chair Roger Wicker (R-MS) said last week he is now uncertain as to whether a comprehensive infrastructure package will make it through Congress this year. After a committee hearing in which representatives of the trucking industry, railroads and labor unions testified about the nation's infrastructure needs, Chair Wicker said, "[t]here's going to have to be some realism on both sides of the aisle about the payfors." All witnesses at the hearing supported an increase in the federal gas tax, with two—Chris Spear of the American Truck Association and Oliver Willis of the AFL-CIO's Transportation Trades Department—telling the chair the tax should be indexed to inflation. Wicker declined to commit too strongly to funding sources. However, many Senate Republicans are wary of considering a federal gas tax increase, including Sen. Mike Lee (R-UT), who attempted to focus on the harm such an increase would cause to rural and middle-class Americans.

The top Democrat on the committee with primary infrastructure jurisdiction, Senate Environment and Public Works Ranking Member Tom Carper (D-DE), wants to explore the potential of a vehicle miles traveled (VMT) tax. He has asked the trucking and freight industry to provide their input on how the idea may succeed as an alternative to federal motor fuels tax. He hopes to coordinate with committee Chair John Barrasso (R-WY) to set up a hearing to look into funding possibilities.

Over in the lower chamber, House Ways and Means Committee Chair Richard Neal (D-MA) remains optimistic that an infrastructure package may yet still be accomplished, saying that it is the "one thing" the two sides can agree upon this session. Because funding is a central concern to the infrastructure debate, Neal will play an instrumental role in the discussions, should it go forward. Neal, whose committee will soon hold a hearing on infrastructure, frequently discusses the issue with Treasury Secretary Steven Mnuchin.

Of course, the House Transportation and Infrastructure Committee will be heavily vested in this debate as well. After the committee held an extensive hearing on the future of infrastructure, committee Chair Peter DeFazio (D-OR) argued that lawmakers must agree on a long-term solution to the funding shortage of the Highway Trust Fund; he suggested a transition to a mileage-based system. In the short-term, however, he sees no other choice but to raise the gas and diesel tax.

President Trump and Gov. Cuomo Meet on SALT. There were some conversations between President Trump and New York Governor Andrew Cuomo about the state and local tax (SALT) deduction that was capped at \$10,000 in the 2017 *Tax Cuts and Jobs Act*. Gov. Cuomo has been tough on the new tax law as it has a major impact on wealthier New York state citizens who were previously allowed to deduct all state and local property taxes from their federal income tax bill. Other states that were affected by the new law include New Jersey, Connecticut, and California. Following the meeting, Cuomo said Trump would be open to discussing the cap, however, Senate Finance Committee Chair Chuck Grassley (R-IA) said the issue would not be revisited. On the House side, this issue has also been raised by Reps. Bill Pascrell (D-NJ) and Pete King (R-NY).

Half of Voters Favor Expanding Estate Tax. Survey says... do not repeal the estate tax, according to a **POLITICO/Morning Consult** poll. The poll, which was taken earlier this month, surveyed 1,845 registered voters on their opinion of the tax levied on an estate. The survey's results concluded that half of voters would support taxing more Americans under the estate tax. The tax, which has been referred to as the "death tax" and "inheritance tax" has remained a contentious issue between parties over the years. Most recently, 2020 presidential candidate Bernie Sanders released a bill (S.309) that would levy a 45 percent tax on estates with

net values between \$3.5 million and \$10 million, and a 77 percent tax on estates valued over \$1 billion. Alternatively, on the Republican side, Sen. John Thune (R-SD) has reintroduced a bill with Senate Majority Leader Mitch McConnell (R-KY) and Senate Finance Committee Chair Chuck Grassley (R-IA) that would permanently repeal the death tax.

REGWATCH

IRS Hears Feedback on GILTI. The Internal Revenue Service (IRS) and Treasury Department held a public hearing Feb. 13 on the guidance related to the Global Intangible Low-Taxed Income (GILTI) provision (REG-104390-18), issued on Oct. 10, 2018, passed under the *Tax Cuts and Jobs Act* (P.L. 115-97). Two witnesses—Stewart Lipeles (Baker & McKenzie, LLP) and Catherine Schultz (National Foreign Trade Council)—testified at the hearing.

Lipeles urged the Treasury Department to withdraw the Qualified Business Asset Investment (QBAI) anti-abuse guidance on the grounds that it is invalid. He said the proposed rule disregards congressional intent and has no basis in the legislative history of the statute. Further, it does not reference any specific grant of rulemaking authority. Lipeles also said that the anti-abuse rule fails to take a taxpayer's intent into account as it does not consider whether a transaction has a non-tax economic substance or a business purpose.

Schultz raised a number of issues with the proposed guidance, focusing on the fact that taxpayers with operations in high-tax jurisdictions may be subject to double taxation due to interactions between the GILTI and the Base Erosion Anti-abuse Tax (BEAT).

Check out the Brownstein Tax Policy Team's coverage of the hearing.

Land of OZ. On Feb. 14, the IRS and Treasury Department held a hearing on the Opportunity Zone provision included in the *Tax Cuts and Jobs Act*. Over 200 people were in attendance and 20 witnesses testified at the hearing—such attention is rare in the tax world. Many issues were raised during the hearing, but the following three were raised by multiple witnesses:

- **Six Month Timeframe:** The requirement that an Opportunity Fund needs to have 90 percent of its capital invested in Opportunity Zone Property within the first six months of the taxable year of the Opportunity Fund is too short a timeframe. It may be difficult for a newly-formed fund to meet this requirement and may delay or discourage the formation of potential Opportunity Funds. Multiple witnesses called on the officials to extend this period.
- **Reinvesting Gains:** There is a lack of clarity on the tax consequences of an Opportunity Fund reinvesting capital gained from the sale of assets of another Opportunity Zone project. Witnesses recommended Treasury and IRS provide favorable tax treatment for the reinvestment of such capital.
- **Qualifying Projects:** There is a need for additional guidance on the types of development projects that qualify as Opportunity Zone investments and the degree to which a building would have to be altered in order for it to qualify. Witnesses said that the IRS should not have the authority to pick and choose between different types of economic development, as long as a project satisfies the requirements of the statute.

The Brownstein Tax Policy Team will continue to follow Opportunity Zone guidance carefully. The second round of Opportunity Zone regulations is expected to be released this spring. For more information on the Opportunity Zone hearing or questions about guidance, please feel free to **contact us**.

1111 CONSTITUTION AVENUE

IRS Receives \$11.3B In Spending Bill. Phew—government officials can breathe a bit easier now that another partial government shutdown has been averted. After an additional three weeks of negotiation, lawmakers finally settled on a deal to fund the nine remaining agencies through the end of the fiscal year. On Thursday, both the House and Senate comfortably approved the spending bill to keep the government open through Sept. 30, 2019. President Trump signed the bill, H.J. Res 31, on Friday. The bill includes \$11 billion for the Internal Revenue Service (IRS), which is about \$193 million less than what was requested and about \$128 million less than last year. In addition to the \$320 million Congress provided for the implementation of the *Tax Cuts and Jobs Act* last year, lawmakers provided an additional \$77 million this year.

Lower Refunds Are the Worst. Amidst the continued rollout of the *Tax Cuts and Jobs Act* (TCJA) regulations and the partial government shutdown, this tax filing season has become a bit more complicated than usual. After the enactment of the TCJA, the Treasury Department issued new withholding tables. While a majority of Americans saw a bump in their paychecks as a result of the changes, taxpayers are now beginning to notice that their refunds may be a bit less than anticipated due to under withholding. According to statistics released by the Treasury Department, average refunds fell by about 8.7 percent—to \$1,949 from \$2,135—compared to last year.

Democrats are blaming the Treasury Department for not offering proper guidance ahead of tax filing season. Last week, 40 Senate Democrats—including Senate Finance Committee Ranking Member Ron Wyden (D-OR) and Senate Minority Leader Chuck Schumer (D-NY)—sent a letter to Treasury Secretary Steven Mnuchin and Internal Revenue Service (IRS) Commissioner Charles Rettig, calling on them to provide additional relief to taxpayers who under-withheld their taxes as a result of newly issued withholding tables. Specifically, the letter called on the Treasury Department and IRS to “waive...penalties for those who underpaid [taxes] by no fault of their own.” Although the IRS has already announced it would forgive taxpayers who paid at least 85 percent of their taxes in 2018, Senate Democrats say that is insufficient, and continue to urge Treasury to further lower the requirement. The American Institute of CPAs (AICPA) has also urged federal officials to provide taxpayers who underpaid their obligations with “additional and more extensive relief” from penalties on top of the recent waiver from the IRS.

Senate Finance Committee Chair Chuck Grassley (R-IA) has pushed back against Democrats for capitalizing on reports that refunds are down, saying that they are misleading taxpayers into thinking that there is a correlation between the size of their refunds and how much taxes they actually paid.

AT A GLANCE

- **GILTI—Final Verdict to be Issued by Summer.** Treasury Department officials indicated that final rules on Global Intangible Low-Taxed Income (GILTI) will be finalized by June 22. If the provisions are finalized by this date, companies will have to apply the rules retroactively starting on Jan. 1, 2018. The IRS and Treasury released proposed GILTI rules on Sept. 13, 2018.

- **McGuire Tapped for Treasury Leg. Affairs.** On Thursday, President Trump officially nominated Brownstein alum Brian McGuire to be assistant secretary for legislative affairs at the Treasury Department. McGuire was a Policy Director with Brownstein from June 2017 to Jan. 2019.
- **Cloture Filed on Desmond.** The long saga of Michael Desmond’s confirmation battle continues as Senate Majority Leader Mitch McConnell (R-KY) filed cloture on his nomination last week. The Senate is scheduled vote on Desmond during the week of Feb. 25.
- **National Debt: \$22 Trillion.** After the national debt officially reached \$22 trillion last week, National Economic Council Director Larry Kudlow said the president was “concerned” about the number, although he said the scale of a debt was not “a problem.”
- **Employer Participation in Repayment Act.** Sens. Mark Warner (D-VA) and John Thune (R-SD) introduced a bill that would give employers the opportunity to contribute up to \$5,250 tax-free to repay employee student loans.
- **Safe!** On Feb. 13, the Treasury Department and the IRS issued **guidance** that provides a safe harbor method for calculating depreciation deductions for passenger automobiles that qualify for the 100 percent additional first year depreciation deduction and that are subject to the depreciation limitations for passenger automobiles.

BROWNSTEIN BOOKSHELF

- **JCT Estimating Process.** The Joint Committee on Taxation released an overview of its revenue estimating process of proposed tax legislation. Learn more **here**.
- **Warren Pursues Universal Child Care.** Sen. Elizabeth Warren (D-MA) announced over the weekend that a portion of the revenue generated from her proposed wealth tax would be used to fund universal child care. Bloomberg has **more**.
- **A Look Back at Democratic Tax Policies.** The Wall Street Journal **takes a deep dive** into the evolution of Democratic tax policies.
- **Rubio Receives Buyback Pushback.** Not everyone is happy with Sen. Marco Rubio’s (R-FL) buyback proposal, including the National Review. The publication **argues** the plan would establish triple-taxation.

REGULATION STATION—ALL ABOARD

INTERNATIONAL

Regulation	Latest Action	Regulation Link	Comment Countdown	Brownstein Commentary
Sec. 965 Transition Tax	Feb. 5, 2019 Final Regulations	84 FR 1838	Deadline Passed Oct. 9	
Certain Hybrid Arrangements	Dec. 28, 2018	REG-104352-18	14 Days	
BEAT (Sec. 59A)	Dec. 21, 2018	REG-104259-18	7 Days	

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	56 Days	
Qualified Business Income Deduction (Sec. 199A)	Feb. 8, 2019 Final Regulations	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	14 Days	
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	9 Days	
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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