

State of the Union – Tax and Infrastructure

On Tuesday, Feb. 5, President Donald Trump delivered the State of the Union address. The theme was “choosing greatness,” with President Trump discussing a range of topics from immigration and trade to foreign policy and space exploration. While President Trump did not focus on taxes, he did briefly tout the benefits of the *Tax Cuts and Jobs Act* (P.L. 115-97) and its positive impact on the economy.

The Brownstein tax policy team takes a closer look at President Trump’s speech and what its implications are for tax and infrastructure policy in 2019.

TAX

President Trump took a victory lap for enacting the *Tax Cuts and Jobs Act* (TCJA), emphasizing its impact on middle-class families and tying it to a strong economy, with unemployment at an all-time low. While President Trump did not promise a new tax bill, there may be congressional action on specific issues.

Below is an analysis of select remarks from President Trump’s speech:

1. ***“We passed a massive tax cut for working families and doubled the child tax credit.”***

Since the enactment of the TCJA, the administration and GOP leaders in Congress have sought to publicize the benefits of the tax bill for working-class Americans. The TCJA lowered the tax rate for most individuals, resulting in tax cuts for 90 percent of middle-income households and 80 percent of households overall. As part of a middle-class tax relief package, the TCJA also doubled the Child Tax Credit (CTC) from \$1,000 to \$2,000, increased the refundable portion to \$1,400, and expanded its scope to include dependents other than qualified children. In addition, the TCJA broadened the pool of taxpayers eligible for the credit by increasing income phase-out ranges.

The Trump administration and congressional Republicans would like to make benefits for working-class families permanent. Under the TCJA, these provisions are set to expire at the end of 2025.

House

While Ways and Means Chair Richard Neal (D-MA) has not ruled out making portions of the TCJA permanent, he is unlikely to do so this Congress. Many House Democrats are still upset by the manner in which House Republicans passed the TCJA. Neal plans to hold hearings on the impact of the bill. Several Democratic members would like to scale back corporate tax relief and benefits for higher-income individuals in order to pay for additional and permanent benefits for working-class Americans. On Feb. 13, the Select Revenue Measures Subcommittee (formerly Tax Policy Subcommittee), chaired by Rep. Mike Thompson (D-CA), will be holding a hearing on middle-

class tax relief.

Below are a few bills that have been introduced in the House this Congress that address middle-class tax relief:

- ***Middle Class Savings Act (H.R.589) | Rep. Andy Barr (R-KY)***. Applies current income tax bracket breakpoints to capital gains brackets.
- ***Permanent Tax Relief for Working Families Act (H.R.217) | Rep. Jason Smith (R-MO)***. Makes permanent certain changes made by the TCJA to the CTC.
- ***SALT Deductibility Act (H.R.188) | Reps. Nita Lowey (D-NY) and Peter King (R-NY)***. Repeals the limitation on the deduction for state and local taxes.
- ***H.R.22 | Rep. Kevin Brady (R-TX)***. Makes permanent the increase in the standard deduction, the increase in and modifications of the CTC, and the repeal of the deduction for personal exemptions contained in the TCJA.

Senate

In January, Senate Finance Committee Chair Chuck Grassley (R-IA) outlined his committee's agenda for the 116th Congress, which included making the TCJA tax cuts for individuals permanent. Specifically, Grassley mentioned an interest in permanency for the CTC and rate cuts. Also, he plans to explore new proposals from the administration to provide further tax relief for families.

Below are a few bills that have been introduced in the Senate this Congress that address middle-class tax relief:

- ***Educational Opportunities Act (S.5) | Sen. Marco Rubio (R-FL)***. Allows a credit against tax for qualified elementary and secondary education tuition.
 - ***Right Start Child Care and Education Act (S.137) | Sen. Jeanne Shaheen (D-NH)***. Increases the credit for employers establishing workplace child care facilities, increases the child care credit to encourage greater use of quality child care services, provides incentives for students to earn child care-related degrees and to work in child care facilities, and increases the exclusion for employer-provided dependent care assistance.
 - ***Livable Incomes for Families Today (LIFT) Act (S.4) | Sen. Kamala Harris (D-CA)***. This bill establishes a refundable tax credit to increase the take-home pay of American workers and enhance their financial stability.
2. ***"We virtually ended the estate, or death tax on small businesses, ranches, and family farms."***

A more accurate statement would have been the TCJA eliminated the estate tax for smaller estates. The TCJA did not repeal the federal estate tax or change the 40 percent top marginal rate, though it did double the exclusion amount to over \$11 million starting in 2018. The provision sunsets after 2025. President Trump's statement signals continued interest among GOP

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lawmakers to repeal the estate tax. This will be a major issue as the nation heads into the 2020 election cycle—several left-leaning Democratic presidential hopefuls, including Sens. Elizabeth Warren (D-MA) and Bernie Sanders (I-VT), have suggested significant tax increases on the top 1 percent.

House

Democrats and Republicans are starkly divided on repealing the estate tax. With Democrats in control of the House, it is highly unlikely that an estate tax repeal will pass. House Republicans continue attempts to repeal the “death tax.”

Below are a few bills that have been introduced in the House this Congress that address a repeal of the estate tax:

- ***Death Tax Repeal Act (H.R.218) | Rep. Jason Smith (R-MO)***. Permanently repeals the estate and generation-skipping transfer taxes.
- ***Permanently Repeal the Estate Tax Act (H.R.521) | Rep. Bob Latta (R-OH)***. Permanently repeals the estate tax and retains stepped-up basis at death.

Senate

While Grassley has expressed an interest in making individual tax relief in the TCJA permanent, he did not specifically call out estate tax relief as a priority.

Below are a few bills that have been introduced in the Senate this Congress that address a repeal of the estate tax:

- ***Estate Tax Rate Reduction Act (S.176) | Sen. Tom Cotton (R-AR)***. Reduces the rate of tax on estates, gifts, and generation-skipping transfers.
 - ***Death Tax Repeal Act (S.215) | Sen. John Thune (R-SD)***. Permanently repeals the estate and generation-skipping transfer taxes.
3. ***“Companies are coming back to our country in large numbers thanks to historic reductions in taxes and regulations.”***

The TCJA lowered the corporate tax rate from 35 percent to 21 percent, repealed the corporate alternative minimum tax (AMT), and introduced more generous business asset expensing and depreciation measures. The new tax law also created a new 20 percent deduction for passthrough businesses. With respect to international tax rules, the TCJA introduced a one-time transition tax on the accumulated overseas earnings of U.S. companies in the hopes that it would increase an inflow of capital into the country.

Since its enactment, the Treasury Department has been releasing dozens of regulations and guidelines on the implementation of the TCJA. Major guidance includes regulations on Sec. 199A,

the Global Intangible Low-Taxed Income (GILTI), the Base Erosion and Anti-Abuse Tax (BEAT), and Opportunity Zones.

House

The House is highly unlikely to consider legislation to provide additional domestic or international tax relief to corporations. In fact, Democrats are likely to seek tax increases on multinational businesses. However, the GOP would like to see Congress pass a technical corrections bill to fix certain provisions to more accurately reflect congressional intent or to fix clerical errors in the TCJA. Late last year, outgoing Ways and Means Chairman Kevin Brady (R-TX) released a discussion draft of a technical corrections bill—the *Tax Technical and Clerical Corrections Act*. The measure ultimately failed, though Ways and Means Republicans will continue to pressure Democrats to adopt the language this session. While a compromise may be possible, Democrats are likely to draw up a long wish list in exchange for their support of a technical corrections package.

Senate

On the Senate side, on Jan. 29, Finance Committee Democratic Chief Tax Counsel Tiffany Smith said that fixes sought by Republicans to TCJA will require a lot of negotiation. She cited last year's deal on a "grain glitch" fix affecting farm co-ops in exchange for an expansion of the low-income housing tax credit as an example of a successful negotiation that members hope to replicate this year. Republicans will require the support of Democrats in order to garner the necessary votes to pass a technical corrections bill.

To date, the Joint Committee on Taxation has identified over 70 technical corrections that are needed in the TCJA.

INFRASTRUCTURE

Ahead of the address, some politicos expected infrastructure to play a major role in President Trump's address. However, he only spoke briefly on the topic, offering hopes for bipartisan cooperation on an infrastructure package.

Below is a discussion of select remarks from President Trump's speech:

1. ***"Both parties should be able to unite for a great rebuilding of America's crumbling infrastructure ... I know that the Congress is eager to pass an infrastructure bill—and I am eager to work with you on legislation to deliver new and important infrastructure investment, including investments in the cutting-edge industries of the future. This is not an option. This is a necessity ..."***

After the Trump administration and congressional Democrats released divergent proposals last year, discussions to combine tax reform and infrastructure quickly fell apart. This year, stakeholders remain hopeful for the adoption of an infrastructure package, though neither party

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has yet to release any specific details. In his speech, President Trump called for bipartisan infrastructure legislation, but did not offer any details on what such a package would include or potential payoffs. A blank slate, though, may make it easier for lawmakers to negotiate a deal.

House

Rep. Neal (D-MA) has indicated that infrastructure will be a major priority for the House Ways and Means Committee. Specifically, he plans to focus on both funding offsets for a potential comprehensive package and tax-favored bonds to leverage more investment in infrastructure.

Transportation and Infrastructure Committee Chair Peter DeFazio (D-OR) has also expressed interest in a bipartisan infrastructure proposal. After President Trump's address, DeFazio said that any "serious infrastructure proposal must provide sustainable, long-term federal funding." The committee will likely look to raising the gas tax or other user fees, such as a vehicle miles traveled (VMT) tax to fund infrastructure reform.

Also of note, the House Transportation and Infrastructure Committee will hold a hearing Feb. 7 focused on the costs of a failure to pass an infrastructure package. The committee's ranking member, Sam Graves (R-MO), is expected to meet with President Trump later this week. The agenda for their meeting has not yet been released, though the two are expected to discuss President Trump's priorities for an infrastructure package. With the *Fixing America's Surface Transportation (FAST) Act* set to expire in September 2020, surface transportation reauthorization was expected to be a major deliverable of the 116th Congress, but both House leaders and the White House have been slow out of the gates in offering up any significant proposals or principles to date.

Although Congress has only been in session for a little over a month, members have already been active in introducing infrastructure legislation. Below are a few bills that have been introduced in the House this Congress that address the issue:

- ***Build America Act of 2019 (H.R.180) | Rep. Alcee Hastings (D-FL)***. This bill would provide dedicated funding for the national infrastructure investment program and the capital investment grant program.
- ***National Infrastructure Development Bank of 2019 (H.R.658) | Rep. Rosa DeLauro (D-CT)***. This bill would facilitate efficient investments and financing of infrastructure projects and new job creation through the establishment of a National Infrastructure Development Bank.
- ***Increase Transportation Alternatives Investment Act of 2019 (H.R.228) | Rep. Nydia Velazquez (D-NY)***. This bill would authorize programs and activities to support transportation options in areas that are undergoing extensive repair or reconstruction of transportation infrastructure.

Senate

The upper chamber has been slow to act on infrastructure this session. Last year, Senate Minority Leader Chuck Schumer (D-NY) demanded that any infrastructure package include energy-efficient

and climate-conscious provisions.

This year, several senators have teamed up on a series of bipartisan proposals on infrastructure. The proposals examine various payfors, including public-private partnerships, raising the federal statutory cap on private activity bonds (PABs), increasing the amount of tax-exempt bonds the Department of Transportation can approve, introducing a VMT tax, and increasing the gas tax.

Below are a few proposals that are currently being discussed in the Senate that address infrastructure:

- ***Building United States Infrastructure and Leveraging Development (BUILD) Act*** | Sens. **John Cornyn (R-TX) and Mark Warner (D-VA)**. This proposal would raise the federal statutory cap on private activity bonds (PABs) issued by or on behalf of state and local governments for highway and freight improvement projects from \$15 billion to \$20.8 billion, increasing the amount of tax-exempt bonds the U.S. Department of Transportation (USDOT) can approve for these projects by \$5.8 billion. Sens. John Cornyn (R-TX) and Mark Warner (D-VA) introduced a similar bill, S.2320, in 2018. They have not yet reintroduced this legislation. They are currently working on updating the bill.
- ***Revitalizing American Priorities for Infrastructure Development (RAPID) Act*** | Sens. **John Cornyn (R-TX) and Tim Kaine (D-VA)**. This bill would allow state and local governments to more easily apply for Transportation Infrastructure Finance and Innovation Act (TIFIA) program loans. Sens. John Cornyn (R-TX) and Tim Kaine (D-VA) introduced a similar bill, S.3631, in 2018. They have not yet reintroduced this legislation for the 116th Congress. They are currently working on updating the bill.

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This document is intended to provide you with general information about the implications from the State of the Union address for tax and infrastructure policy in 2019. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.