Brownstein Hyatt
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Tax Policy Trends

What Democratic, Republican and Divided Control of Washington Could Bring in 2021

Brownstein Hyatt Farber Schreck
National Tax Policy Group

Plan for the Possibilities

The following slides outline legislative priorities in the event that:

- **Democrats control both the legislative and executive branch post-Election Day.** It begins with the event Democrats take control of the House, Senate and the White House, outlining tax aspects of various issue areas. It follows with the dynamics of potential Budget Reconciliation legislation.
- **Republicans control both the legislative and executive branch post-Election Day.** It begins with the event Republicans retain control of the presidency and the Senate, and flip the House. It outlines the tax aspects of various issue areas and follows the dynamics of potential Budget Reconciliation legislation.
- **Divided government.** It begins with the assumption that the election will lead to one of two outcomes: (1) a continuation of the status quo or (2) the continuation of a Republican Senate, a Democratic House and the executive flipping to Democratic control. It outlines major legislation that a divided government might pursue, absent the ability of either party to use Budget Reconciliation.

Brownstein's Government Relations practice and Tax Policy Group are assisting companies preparing for these events. Our bipartisan team is assessing the potential opportunities and risks associated with expected legislative movement and working alongside clients to develop their 2021 strategies. For any company game-planning their approach to Washington, these policies should be considered.

Regardless of the election's outcome, expect an incoming government raring to govern. Preparation for any eventuality is key.

What Democratic Control of Washington Could Bring in 2021

Scenario: A Democratic Sweep

- If Joe Biden defeats Donald Trump, Democrats retain control of the House of Representatives and take control of the Senate, then tax policy will be a significant part of most legislative initiatives as Democrats exert control over the legislative and executive branches.
  - Note: If the presidential race is close, the outcome may not be known until well after Nov. 3.
  - Senate control may not be known until January 2021 as one or both Georgia Senate seats could result in a runoff.

Democratic Tax-Related Agenda and Policy Priorities

COVID-19 and Rebuilding the Economy. In the short-term, unless the economy is rapidly expanding in January 2021, Democrats will likely take emergency actions to pass a COVID-19 stimulus bill. In the long-term, they will enact policies that incentivize small business expansion, reshoring and job creation.

Health Care. Democrats will push more aggressive federal engagement in combatting the virus, including measures like those the Senate ultimately did not pass during the 2020 COVID-19 stimulus debate. Later, Democrats will tackle health care access and affordability.

Corporate Taxation. Democrats will likely consider increases to the corporate tax rate, other TCJA reversals, and penalties for offshore operations as a potential way to pay for spending initiatives and later to reduce the deficit.

Individual Taxation. Democrats will reduce income inequality through the tax code, helping working-class families while raising taxes on wealthier Americans.

Infrastructure. Democrats could couple surface transportation legislation with an extension of transportation excise taxes, tax-favored bond financing and energy tax legislation. Congress historically has used infrastructure legislation to spur the economy.

Energy/Environment. Many Democrats will advocate for addressing climate change in 2021. Tax policies such as a carbon tax will be part of this debate.

Budget Solvency and Income Inequality. In 2021, lawmakers will decide to reduce the budget deficit. If Democrats control, many will advocate for policies that reduce income inequality and the deficit simultaneously.

Rebuilding the Economy—Short-Term Emergency COVID-19 Bill

- In the short-term, a President Biden would likely focus on an emergency COVID-19 economic stimulus package to spur economic growth and improve the public health situation.
  - A stimulus package prior to the November election is highly unlikely and, barring a major winter resurgence of the virus coupled with a spike in business closures and unemployment, a lame duck stimulus bill is also an uphill climb.
- The size and scope of a package will depend on the public health and economic outlook. If unemployment rates continue to fall and infection rates do not worsen during the winter, a smaller, more targeted package is likely.
  - A public health plan to address the pandemic, including a national mask mandate.
  - **Assistance for all businesses, including tax incentives.**
  - Targeted grants and loans for small businesses.
  - Bolstered unemployment benefits.
  - **Help for individuals and families, including tax incentives.**

Rebuilding the Economy—Short-Term Emergency COVID-19 Bill

Employee Hiring and Retention

- Build and improve work-share programs.
- **Tax credits, such as an expansion of the Employee Retention Tax Credit, for businesses who commit to helping workers stay employed through the crisis.**
- **Hiring tax credit such as an expansion of the Work Opportunity Tax Credit to include workers who were receiving unemployment assistance.**

COVID-19 Prevention

- **Cleaning tax credit to help businesses implement new health and safety protocols.**

Addressing Unemployment

- Robust unemployment benefits that are efficiently delivered to those who lose jobs due to the pandemic.
- Put people to work by enlisting them to help fight the pandemic, including through a Public Health Jobs Corps.

Liquidity and Benefits

- **Additional $1,200 relief checks for individuals and families, if bad economic conditions persist.**
- Adding $200 a month to Social Security checks.
- Forgiveness of at least $10,000 per person of student loan debt.
- Paid emergency sick leave for anyone in need, without limiting the size of the company or differentiating between contractors, self-employed individuals, and traditional employees.

Rebuilding the Economy—Long-Term

Health Care	Address access, affordability and comprehensive coverage.
Corporate Tax	Ensure corporate America pays its fair share.
	Discourage offshoring.
	Mobilize American manufacturing and innovation—Made in America/Buy American.
Individual Policies	Promote tax policies that help address income and racial inequality.
	Raise the minimum wage.
	Create better safety net programs, including building a caregiving and education workforce.
Green Energy	Invest in a sustainable, clean energy future.
Infrastructure	Build a modern infrastructure while creating good-paying union jobs.

Biden Health Care Proposals: Face COVID-19

Expand Access to COVID-19 Care

- Ensure no cost-sharing in any public health programs for COVID-19 treatments and vaccines.
- Expand authority of the National Disaster Medical System to reimburse providers for treatment costs related to COVID-19 that are not covered by insurance.

Assist State and Local Governments

- Increase Federal Medical Assistance Percentage (FMAP) by at least 10% for all states and provide matching federal dollars for states to maximize Medicaid enrollment.
- Create an emergency fund for state and local governments to provide resources for health and economic needs.

Promote Prevention

- Increase funding for the CDC, state health departments and testing.
- Restore the White House National Security Council Directorate for Global Health Security and Biodefense.
- Amend the Public Health Service Act to cover all testing, treatment, preventative services and vaccines necessary to address a public health emergency for an infectious disease.
- Give the Secretary of Health and Human Services authority to approve the price of vaccines developed with taxpayer dollars.

Health Care: Build on the ACA

- Biden continues to resist calls from the party's left activist wing to adopt a single-payer policy as part of his platform.
- Instead, Biden's current health care plan focuses on the following:
  - **Access.** A public health insurance option like Medicare for those who are dissatisfied with their employer or exchange plan.
  - **Affordability.** Increasing the value of **tax credits** to lower premiums and extend coverage to more working Americans.
  - **Coverage.** Expanding coverage for low-income Americans, especially for those in states that did not adopt Medicaid expansion. Biden plans to automatically enroll these individuals when they interact with public schools or food assistance programs.

Biden Health Care Proposals

Access to Care

- Provide a public insurance option that would compete with private insurance and negotiate prices with hospitals and providers.
- This public option would also be available to those who have access to employer-sponsored plans.
- Allow importation of prescription drugs from other countries as long as the drug is considered safe by Department of Health and Human Services.

Affordability

- **Eliminate income cap for premium tax credits with premiums capped at 8.5% of income.**
- Lower Medicare eligibility age to 60.
- Allow the government to negotiate drug prices directly with manufacturers.
- Limit drug price increases to the rate of inflation.
- **Tax drug makers whose drug prices increase above rates of inflation.**
- Use external reference pricing/average OECD price to recommend prices for drugs that face no competition.

Coverage

- Offer premium-free access to 4.9 million Americans living in states that did not expand Medicaid.
- Enroll low-income individuals and families at touch points (e.g., at the time of public school enrollment, while applying for benefits such as TANF and SNAP, and at community health centers).
- **Expand ACA coverage to DACA recipients, including tax credits.**

ACA Taxes

Will any of the taxes that previously funded the ACA be resurrected to pay for health care reform? No.

- **Cadillac Tax.** A 40% excise tax on employer plans that exceeded a certain level of premiums, designed to disincentivize expensive employer plan coverage.
  Revenue loss was $197 billion over 10 years.

- **Health Insurance Tax.** Applied to all insurers who offered fully insured plans through the ACA exchanges, the group market and Medicare and Medicaid.
  Revenue loss was $151 billion over 10 years.

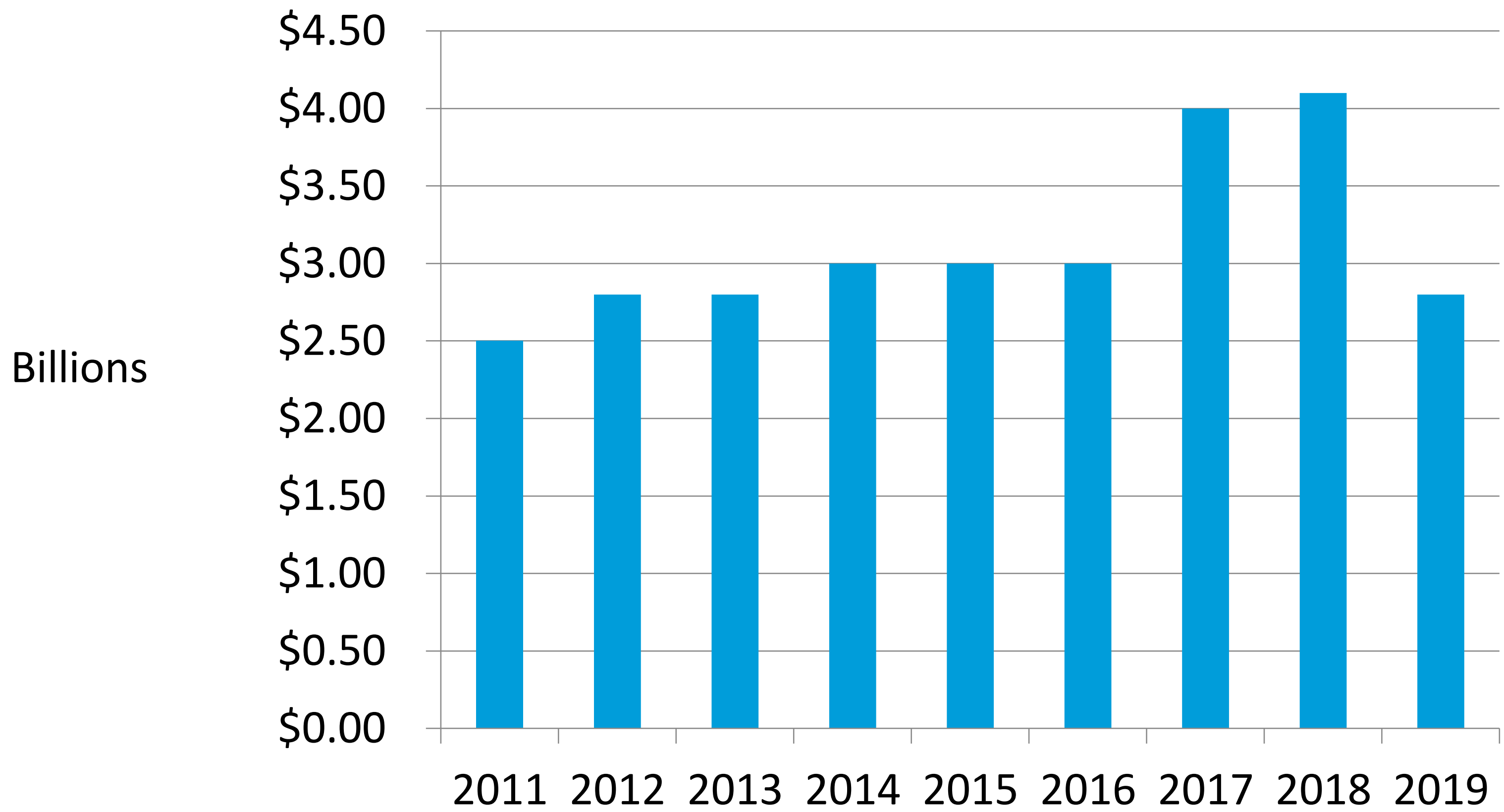
- **Medical Device Tax.** A 2.3% excise tax on medical devices.
  Revenue loss was $25 billion over 10 years.

- **Individual Mandate Penalty.** Phased in from 2014–2016, it imposed a 2.5% penalty on income above a filing threshold. Repealed in TCJA.
  Revenue loss was $38 billion over 10 years.

ACA Tax on Manufacturers

Relevant ACA taxes that are currently imposed:

ACA annual tax on manufacturers and importers of branded drugs. It has raised the following amount annually:



ACA Taxes

- Relevant ACA taxes that are currently imposed (cont.):
  - Employer Mandate penalty – for failing to provide adequate quality health insurance to full-time employees. Penalty is $2,500/FTE annually. Not being enforced by the Trump administration, although not repealed.
- Will Congress look to new taxes?
  - Democrats could consider potential taxes on tobacco, nicotine and cannabis.

Corporate Tax Proposals

Making Sure Corporations Pay Income Taxes

- Raise corporate rate from 21% to 28%. 

- Implement a 15% minimum book profits tax on firms with $100 million or more in net income.
    - Some firms may report profits but may pay no federal income tax because taxable income is calculated differently than book income.
    - The tax would essentially reinstate a corporate alternative minimum tax that is based on book income rather than a modified tax base.
    - NOLs and foreign tax credits would continue to be allowed.

Corporate Tax Proposals

Discouraging Moving Operations Abroad

- Apply a 10% offshoring penalty surtax on services and sales to U.S. customers from a U.S. company's foreign subsidiary. Assuming a corporate tax rate of 28%, this could amount to a 30.8% tax rate on such profits.
  - Example: The tax would apply to call centers located abroad that service U.S. customers.
  - Query: Will territories remain foreign for U.S. tax purposes?
- Implement strong rules against corporate inversions (when U.S. companies move their headquarters to other jurisdictions for tax purposes).
- Impose restructuring taxes on businesses that move U.S. headquarters offshore.
- Establish a "claw-back" provision to force a company to return public investments and deny all deductions and expensing write-offs for companies that move jobs overseas, if those jobs could have been offered to Americans.

Corporate Tax Proposals

Maintaining Jobs in the U.S.

- The "Made in America" tax policy would establish a 10% tax credit for companies making investments creating jobs for American workers and accelerating economic recovery.
- The credit would be available for:
    - Revitalizing existing closed or closing facilities;
    - Retooling any facility to advance manufacturing competitiveness and employment; and
    - Expanding or broadening U.S. facilities to grow employment in the U.S.
- It will also apply when a company is increasing manufacturing wages above the pre-COVID-19 baseline for jobs paying up to $100,000.
- The Biden campaign specifically mentions tax code changes that will encourage production in the U.S.
    - **Query:** Will territories remain foreign for U.S. tax purposes?

Corporate Tax Proposals

Reshoring Jobs to the U.S.

- Double the tax rate on Global Intangible Low Tax Income (GILTI) earned by foreign subsidiaries of U.S. firms, from 10.5% to 21%.
- Made in America tax credit, cited on previous slide, would apply to reshoring investments as well.
- Made in America government purchase policy, although not a tax, will encourage companies relying on the federal government as a customer to maximize domestic operations in order to qualify under procurement rules.

Other TCJA Business Proposals

Democrats have not settled on positions regarding TCJA provisions that will expire or change during the next president's term. These include:

- Sunset of expensing provision. Support for expensing is sliding among Democrats.
- Change in interest expense limitation from EBITDA to EBIT. Most Democrats will likely oppose extension of EBITDA.
- Termination of the research and experimentation deduction provision; the most likely of these three to be extended.

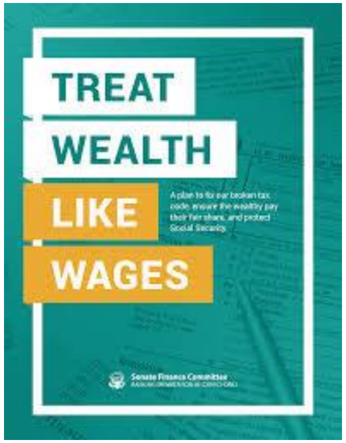
Individual Proposals—Addressing Income Inequality

Biden Proposals	Obama Proposals 
Top Rate. Restore the top rate for individuals to its pre-TCJA level of 39.6% from 37%.	Same
Itemized Deductions. Cap the value of itemized deductions at 28% and restoring the Pease limitation on itemized deductions for those with taxable income above $400,000.	Similar proposal
Sec. 199A. Phaseout the Sec. 199A deduction enacted by the TCJA for those earning over $400,000.	Not applicable
Capital Gains. Tax long-term capital gains (LTCG) and qualified dividends at ordinary income rates on income above $1 million and eliminate the step-up in basis for capital gains.	Raise the LTCG and dividends tax to 28% on couples with incomes over $500,000.
Target Like-kind Exchanges. Eliminate tax-free like-kind exchanges for investors with incomes above $400,000 in order to finance child and elderly care. Taxpayers with incomes above this would not be able to defer capital gains on the sale of real property held for investment.	Limit the amount of capital gains deferred to $1 million per taxpayer per year.
Payroll Taxes. Impose the 12.4% Social Security payroll tax on wage and self-employment income earned above $400,000 (i.e., individuals would be taxed on wages up to $137,700 and on wages over $400,000).	Impose an additional payroll tax on earnings over $250,000.

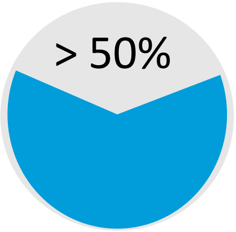
Individual Proposals—Addressing Income Inequality

- **Other Democratic Proposals.** Senate Finance Committee Ranking Member Ron Wyden's (D-OR) "Tax Wealth Like Wages" white paper will provide the framework for a package of tax increases to promote income equality.

  - Imposes an annual tax on unrealized capital gains for individuals with at least $1 million in annual income or $10 million in assets.
  - Equalizes the tax rates for ordinary income and capital.
  - Taxes non-tradable assets at ordinary rates on appreciation back to the date of acquisition upon disposition.
  - Wyden has not indicated whether life insurance should be exempted from the mark-to-market regime.
  - Wyden is expected to release legislation in early 2021.



Prospects

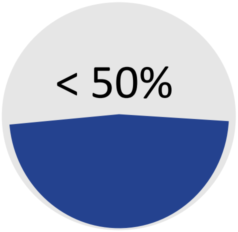


Individual Proposals—Addressing Income Inequality

Other Democratic Policy Proposals (continued)

- **Financial Transaction Tax ("Robinhood Tax").** In 2019, Democrats in both chambers, including Sens. Elizabeth Warren (D-MA) and Bernie Sanders (I-VT), introduced legislation to impose a 0.1% tax on stock, bond and derivative trades.
  - Sen. Kamala Harris (D-CA) has proposed the following financial transaction taxes: 0.2% on stocks, 0.1% on bonds and 0.002% on derivatives.
  - Some proposals exempt initial issuances, trading debt instruments with fixed maturities of 100 days or less, and currency transactions from the tax.
    - The Obama administration proposed an excise tax on financial transactions as low as 0.005% for derivative financial instruments, and as high as 0.5% for ownership interests in corporations and partnerships.

Prospects



- **The Buffett Rule.** The Buffett Rule would impose a 30% minimum tax on annual income above $1 million.
  - Sen. Sheldon Whitehouse (D-RI), a member of the Senate Finance Committee, said in 2019 the Buffett Rule should serve as a guiding light for Democrats.
    - Obama proposed the same minimum tax called the Fair Share Tax that would be fully phased in at $2 million.

Prospects

Depends on what other individual taxes are enacted

Estate Tax Proposals

- **Reduced Exemption.** Biden proposes to reduce the estate tax exemption from $11.58 million per individual to $3.5 million.
  - The TCJA increased the estate tax exemption from $5 million to $11 million and increased it for inflation in subsequent years.
  - However, the TCJA sunsets all individual tax cut provisions at the end of 2025, so under current law the exemption amount would revert to $5 million for years following.
- **Accelerated Sunset.** Biden proposes accelerating that sunset to 2020. Moreover, he wants to go back to $3.5 million, the exemption amount as it stood in 2009. Ironically, this is before the Biden-McConnell agreement of 2012 increased the exemption amount to $5 million.
- **Rate Increase**. Biden proposes increasing the estate tax rate to the 2009 rate of 45% rate.
- **Step UP in Basis.** Biden also proposes the elimination of the step up in basis for individuals inheriting property through an estate. This means that the heir will pay tax on that appreciated amount when the asset is sold.

Wage Proposals

In addition to raising taxes to redistribute wealth and lessen the income inequality gap, Democrats support higher wages for low-income individuals.

What it would do: Biden endorsed a $15 per hour federal minimum wage and an elimination of the lower tipped minimum.

A Closer Look

- Raise the federal minimum wage to $15 per hour for all workers, including farmworkers, domestic workers, tipped workers and workers with disabilities.
- Index the minimum wage to the median hourly wage so low-wage workers' wages keep up with those of middle-income workers.
- Widely and strictly enforce prevailing wage protections.
- Provide more overtime pay to workers by reviving DOL's Obama-era overtime rule.
- Only award government contracts to employers who support their workers, including those who pay a $15 per hour minimum wage and family sustaining benefits.
- Eliminate all non-compete agreements, except the few that are necessary to protect a narrowly defined category of trade secrets, and outright ban all no-poaching agreements.

Other Individual Tax Proposals

Biden has proposed individual tax cuts to help working-class families:

Housing

- A renter's credit to reduce rent and utilities to 30% of income.
- A First Down Payment Tax Credit of up to $15,000.

Family Care
- A $5,000 tax credit for informal caregivers.
- A tax credit for child care facilities built by businesses.
- Expand the Child and Dependent Care Tax Credit, making it fully refundable and advanceable.
- $8,000 tax credit for certain families to help offset child care costs.
- A $1,000 increase in the Child Tax Credit from $2,000 to $3,000, with an extra $600 credit for children under the age of 6.

Retirement
- A 26% tax credit to match traditional retirement contributions as a replacement for deductibility of those contributions. The Biden campaign has not specified a percentage, this is an estimate by the Tax Policy Center.
- An expanded Earned Income Tax Credit for those older than 65.

Infrastructure

In July 2020, Biden released a comprehensive and wide-ranging infrastructure plan that includes investments in traditional infrastructure projects, grid modernization and broadband expansion as well as a series of goals to reduce pollution and address environmental justice issues, among other items.

Highlights from Biden’s $2 Trillion Infrastructure Plan

Traditional Infrastructure Proposals

- Update roads, bridges and electric grids;
- Expand access to broadband;
- Upgrade 4 million buildings and weatherize 2 million homes over four years by providing homeowners with direct cash rebates and low-cost financing; and
- Create union jobs in the construction industry.

Cleaner, Greener Infrastructure

- Provide cities with high-quality, zero-emissions public transportation options, such as light rail networks;
- Achieve a carbon pollution-free power sector by 2035;
- Enable the creation of 1.5 million sustainable homes and housing units;
- Create 1 million jobs in the auto industry and increase the demand for American-made, American-sourced clean vehicles;
- Provide consumers with rebates for trading in old, less-efficient vehicles for newer America-made vehicles;
- Construct 500,000 electric vehicle charging stations;
- Require all new American-built buses be zero-emissions by 2030; and
- Establish new fuel economy standards to reduce pollution.

Infrastructure

- In addition to Biden's infrastructure proposal, on July 1, the House passed the Democrats' Moving Forward Act (H.R.2), a $1.5 trillion comprehensive infrastructure package that includes investments in schools, housing, broadband, green energy and child care.
  - Financing mechanisms include reinstating Build America Bonds and Advance Refunding Bonds, and expanding the issuance of Private Activity Bonds.
  - Expands the Historic Rehabilitation Credit by increasing the percentage of expenses that qualify and by making it easier for tax-exempt entities to access the credit.
  - Expands the Low-Income Housing Tax Credit (LIHTC) by creating targeted housing incentives to build homes in rural and tribal communities and for very low-income households at risk of homelessness.
  - To fund the Highway Trust Fund, the bill would extend certain highway-related taxes, including:
    - Taxes on diesel fuel and special motor fuels and certain alcohol fuels;
    - Retail sales taxes on certain truck and semitrailer chassis and bodies;
    - Taxes on the use of certain heavy vehicles; and
    - Taxes on tires and taxable fuel.

Environment/Energy

Biden has a plan to achieve a 100% clean energy economy and net-zero emissions by 2050 through Executive Orders and legislation.

- This includes caps on existing gas and oil operations, investments in green technology, new infrastructure and more.

Biden has also made the following commitments:

- Recommit to the Paris Climate Agreement, Green Climate Fund and embrace Kigali amendment to the Montreal Protocol;
- Stop China from subsidizing coal exports and outsourcing carbon pollution;
- Prohibit Ex-Im Bank and U.S. International Development Finance Corporation (USIDFC) from financing coal-fired plants;
- End federal subsidies for fossil fuel companies;
- Invest in coal communities as they transition to clean energy, and secure earned benefits for coal miners; and
- Although not a formal pillar of Biden's environmental plan, Biden is in favor of eliminating single-use plastic straws in the food service industry and phasing out other single-use plastics.

Environment/Energy

Ways and Means Committee Chair Richard Neal (D-MA) has championed his Growing Renewable Energy and Efficiency Now (GREEN) Act:

- Corporate.
  - Extend the **investment tax credit**, which allows taxpayers to claim up to 30% of the cost of energy property;
  - Extend the credit for **carbon oxide sequestration facilities** that begin construction before 2026; and
  - Expand **qualified income for publicly traded partnerships** to include income derived from green and renewable energy.
- Workforce.
  - Extend the **advanced energy project credit**, allowing an additional $2.5 billion in credits annually through 2025;
  - Provide a credit for up to 10% of the labor costs of installing **mechanical insulation property**; and
  - Establish tax credit for renewable energy projects that require **high-road labor practices** and **pay prevailing wages**.
- Individuals.
  - Extend the 30% **residential energy efficient property credit**—which applies to solar electric, solar water heating and fuel cell;
  - Expand the **new energy efficient homes credit** from $2,000 to $2,500; and
  - Increase the **nonbusiness energy property credit** lifetime cap from $500 to $1,200 and the percentage for installing energy improvements from 10% to 15% of the cost.

Budget Solvency

- According to the CBO, if current laws do not change, the federal deficit will be roughly $3.7 trillion in fiscal year 2020 and $2.1 trillion in fiscal year 2021.
- Democratic policymakers will decide in 2021 that most legislation needs to be fully offset. Democrats will prefer raising revenue to cutting spending.
- At some point, policymakers will decide that revenue needs to be raised for the sole purpose of reducing the deficit.
- **Assessment: In 2021, Democrats will begin paying for all legislation.**
  - While an initial stimulus/COVID-19 bill may be unpaid for, subsequent bills to build the economy, expand health care and address climate change are likely to be revenue neutral.

How Will Tax Reform Unfold?

Reconciliation or Eliminate Filibuster?

- Even if Democrats take control of the Senate, they will likely face partisan gridlock that will pose a barrier to a Biden administration's policy agenda.
- The Senate's current cloture rule requires 60 members to end debate on most issues and move to a vote. Democrats have two options to pass legislation with less than 60 votes:

Option 1: Eliminate or Change the Filibuster	Option 2: Budget Reconciliation
Set a new precedent by having a senator raise a point of order. If the presiding officer disagrees, Majority Leader Schumer (D-NY) may overturn the chair with 51 votes and a new precedent would be established.	Budget reconciliation is not subject to a filibuster, since only a simple majority is required to adopt the budget resolution and bills under this process.
Eliminate the filibuster by changing Rule 22 requiring 60 votes to end debate on legislation. A 2/3 majority is required to change the rule, making it unlikely.	Democrats could use budget reconciliation to pass legislation, without ever changing current Senate rules and procedure. This is the more likely path, at least in early 2021.
Place restrictions on its use by banning it on particular motions (e.g., motion to proceed).	Budget reconciliation has its limitations.

The Federal Budget Process and Reconciliation

- Each year, Congress undertakes a process to pass a budget resolution (blueprint) and 12 appropriations bills to allocate federal money to fund various government functions.
- **The Textbook Timeline:** Below are the five key steps to the federal budget process.

Feb. — The president submits budget request to Congress.

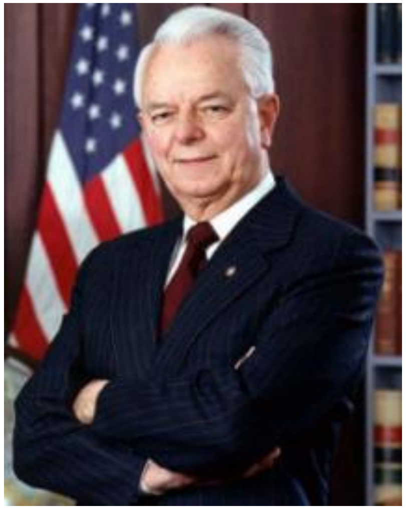
April-May — The House and Senate pass budget resolutions.

June — The House and Senate “markup” their 12 annual appropriations bills.

July-Aug. — The House and Senate vote on appropriations bills and reconcile any differences.

Sept. — The president signs the appropriations bills.

Budget Reconciliation and Limitations

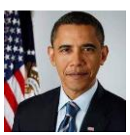
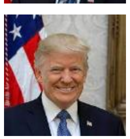


- Created by the Congressional Budget Act of 1974 (CBA), reconciliation allows for expedited consideration of certain tax, spending and debt limit legislation. In the Senate, reconciliation bills are not subject to filibuster and the scope of amendments is limited, making it a good tool to enact controversial budget and tax measures.
- Every year, congressional budget writers have the option of including "reconciliation instructions" for specified committees as part of the budget resolution.
- Reconciliation is subject to various limitations, the most important of which are Byrd Rule restrictions. Pursuant to the Byrd rule, a provision may not be included in reconciliation legislation if it:
  - ✓ Does not have an outlay or revenue effect or produces changes in outlays or revenue that are incidental to the non-budgetary components of the provision.
  - ✓ Is outside the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure.
  - ✓ Increases the deficit beyond the "budget window" (generally 10 years).
  - ✓ Makes changes to Social Security.

Reconciliation Legislation

- The budget resolution authorizes a revenue and a spending reconciliation bill.

  Every new administration needs to pass economic legislation in the first year.

	Reagan	1981	Economic Recovery Tax Act of 1981	Aug. 1981
	Bush	1989	No tax bill; no second term	
	Clinton	1993	Omnibus Budget Reconciliation Act of 1993	Aug. 1993
	Bush	2001	Economic Growth & Tax Reconciliation Act of 2001	June 2001
	Obama	2009	American Recovery and Reinvestment Act of 2009	Feb. 2009
	Trump	2017	Tax Cuts and Jobs Act	Dec. 2017

Options for Revenue Reconciliation Legislation

Economic Recovery/Infrastructure/Clean Energy Tax

Health Care Reform

Climate Change

Offsets for Any Revenue Reconciliation Legislation

The following offsets could be proposed for any reconciliation bill.

- Reverse Income Inequality
  - Increases to the top rate
  - Increases to capital gains tax and remove step-up in basis when an asset holder dies
  - Adoption of a mark-to-market regime
  - Non-qualified deferred executive compensation
- Corporate/International Tax
  - Increase the corporate rate
  - Minimum book tax on revenue
  - Disincentives to place and maintain operations overseas

Offsets for Targeted Revenue Reconciliation Legislation

How will Congress pay for targeted revenue reconciliation bills or titles?

- Clean Energy/Climate Change Tax Offsets
  - Repeal deductions and credits benefitting fossil fuels
  - Enact a tax on carbon
- Health Care Tax Offsets that Democrats Could Consider
  - Excise taxes on tobacco, nicotine and cannabis
  - Tax on manufacturers and importers of branded drugs
  - Tax on drug makers whose prices increase above the rate of inflation

What Republican Control of Washington Could Bring in 2021

Scenario: A Republican Sweep

- If President Donald Trump wins re-election, Republicans retain control in the Senate and flip the House, then tax policy will be a significant part of most legislative initiatives.
  - Note: If the presidential race is close, the outcome may not be known until well after Nov. 3.
  - Senate control may not be known until January 2021, as one or both Georgia Senate seats could result in a runoff.

Republican Tax-Related Agenda and Policy Priorities

COVID-19 and Rebuilding the Economy. In the short-term, if the economic and public health situations continue to improve, Republicans are unlikely to pass another COVID-19 stimulus bill. In the long-term, they will push to make the TCJA permanent and enact provisions to spur economic growth.

Health Care. In the short-term, Republicans will prioritize fighting COVID-19. In the long-term, they will focus on lowering prescription drug prices and measures to improve affordability. The GOP will also encourage innovation and boost access to care.

Corporate Taxation. Republicans will focus on TCJA permanence, incentivizing companies to redomicile, and penalizing those that move operations offshore. They may also consider further reductions to the corporate rate.

Individual Taxation. Republicans will make the TCJA's individual tax cuts permanent and may also seek to further reduce middle class taxes and the capital gains tax rate.

Infrastructure. The president has supported a $1 trillion infrastructure package focused on transportation projects to spur the economy.

Energy/Environment. Republicans will likely continue to pursue a deregulatory agenda and will consider rolling back some alternative energy tax incentives.

Regulatory Reform. Republicans will continue to promote regulatory reform as a means to facilitate economic growth.

Budget Solvency. In 2021, lawmakers will decide to reduce the budget deficit. Many Republicans will advocate for curtailing spending.

Rebuilding the Economy—Short-Term

- **Scenario 1—Continued Improvement in Economic and Public Health Outlook:**
  - President Trump and the Republican Congress may consider a targeted COVID-19 stimulus package, similar to the GOP's Sept. 8 Delivering Immediate Relief to America's Families, Schools and Small Businesses Act (known as the "skinny bill").
  - Twenty Republican senators, a large portion of the conference, have indicated they are not in favor of additional spending. However, most Republican senators, with the exception of Sen. Rand Paul (R-KY), voted in favor of the bill.
  - Barring a major winter resurgence of the virus coupled with a spike in business closures and unemployment, a lame duck stimulus bill is also an uphill climb.

- **Scenario 2—<u>Major</u> Deterioration of Economic and Public Health Outlook:** This might push Republican lawmakers to approve a targeted package, similar to the HEALS Act. This would likely include:
  - **Assistance for certain industries**
  - Liability protection
  - Targeted grants and loans for small businesses
  - Slightly bolstered unemployment benefits
  - **Help for individuals and families**

Rebuilding the Economy—Short-Term Emergency COVID-19 Bill

Tax provisions in a potential COVID-19 stimulus bill might include the following:

Employee Hiring and Retention

- Tax credits, such as an expansion of the Employee Retention Tax Credit, for businesses who commit to helping workers stay employed through the crisis.
- Hiring tax credit such as an expansion of the Work Opportunity Tax Credit to include workers who were receiving unemployment assistance.
- Restore deductibility of meals and entertainment temporarily, to help the restaurant industry mitigate the impact of COVID-19.

COVID-19 Prevention and Other Assistance

- Cleaning tax credit to help businesses implement new health and safety protocols.
- Employment tax rules to accommodate working from home.
- Business restructuring tax incentives to adapt to state/local regulatory guidance on business operations.

Unemployment

- Unemployment benefits that are efficiently delivered to those who lose jobs due to the pandemic.

Liquidity

- Additional $1,200 relief checks for individuals and families, if bad economic conditions persist.
- Paycheck Protection Program (PPP) second draw and loan forgiveness.

Rebuilding the Economy—Long-Term

Health Care	Address COVID-19 and the public health situation.
	Improve affordability, incentivize innovation and bolster access and choice.
Corporate Tax	Make the TCJA permanent.
	Discourage offshoring and incentivize the creation of American jobs.
	Promote innovation through tax policy.
Individual Policies	Make the TCJA permanent.
	Lower the capital gains rate.
	Provide middle class tax cuts.
Infrastructure	Invest in infrastructure projects to spur the economy.
Energy	Continue a deregulatory agenda.
	Repeal some alternative energy tax incentives.
Regulatory Reform	Continue to promote regulatory reform as a means to facilitate economic growth.

Health Care Priorities

- President Trump’s and congressional Republicans’ health care plan will focus on the following:
- **Addressing COVID-19:** Defeating COVID-19, to get the economy back on track, will be the president’s first priority.
  - Push for the distribution of multiple vaccines and a robust delivery system.
  - Testing, including low-cost in-home tests, will be a key part of reopening the U.S.
- **Affordability:** Creating policies that result in lower drug prices for consumers and re-importation of drugs from Canada. Making individual premiums fully deductible.
- **Innovation:** Enacting tax credits to encourage drug manufacturers, including innovative startups and those in the supply chain, to locate in the U.S.
- **Access and Choice:** Using innovative tools to help Americans improve access to health care and stay healthy. Providing new and customized plan options. Social determinants of health that result in medical disparities will also be examined and solutions sought.

Trump Health Care Proposals

Defeat COVID-19

Vaccines: Develop and bring to market multiple vaccines through Operation Warp Speed and federal investment in COVID -19 therapeutics and cures.

- 300 million doses of safe and effective vaccines against COVID-19.
- Prioritized plan to distribute vaccines, starting with health care workers and most at risk.

Testing: Triple the number of rapid testing options, including low-cost at-home testing options.

Supply Chains: Strengthen supply chain for critical medicines, PPE, technology.

Trump Health Care Proposals

2021 Agenda

More Choice:

- Freedom to shop for health care options, including deductibility for individual premiums.
- Access to telehealth.

Lower Costs for Families and Seniors:

- End surprise medical bills.
- Lower prescription drug prices to match lowest prices charged in other countries.
- For low-income, insulin at $35/month; epi-pens at a discount. For Medicare recipients, $200 drug discount cards.

Better Care for All:

- Expand innovative research from COVID-19 vaccine to other diseases.
- Protect those with pre-existing conditions..
- Electronic and portable medical records.

Trump/Republican Health Care Proposals

Affordability

- Limit the amount that Americans pay for certain drugs to no more than the Most Favored Nations price (based on OECD countries having comparable per capita GDP) or to match lowest cost.
- Allow importation of prescription drugs from Canada as long as drug is considered safe by Department of Health and Human Services.
- Limit out-of-pocket expenses in Part D; allow pharmacists to tell Part D participants how they can pay less.
- Make copays on drugs like insulin more affordable for all Americans.
- Incentivize insurers to lower drug prices.
- **Tax deductions for premiums paid by individuals. HSA contributions allowed for Medicare-eligible.**

Innovation

- **Provide tax credits to encourage drug, medical device and biologics manufacturing in the U.S., including those involving active pharmaceutical ingredients.**
- **Provide special tax treatment to help with start-up costs and preserve tax attributes like R&D credits, making it easier for America's innovators to start new drug companies.**
- Harness innovative research from COVID-19 vaccine for other diseases.

Access and Choice

- Make telehealth expansion permanent.
- Encourage insurers to address medical disparities and social determinants of health for their members.
- Promote the use of customized short-term plans, association health plans; health care sharing ministry options; employer HRAs for individuals to use to shop in the individual market .

Corporate Tax Proposals

TCJA Permanence

- Republicans will seek to make the TCJA permanent. Several provisions from the TCJA will expire or phase down in 2021 and beyond.

Timeline	Provisions
Jan. 1, 2022	Research and development (R&D) expenses will be required to be deducted over five years rather than immediately.
Jan. 1, 2022	Business net interest expense will be limited to 30% of EBIT rather than 30% of EBITDA.
Jan. 1, 2023	100% bonus depreciation for qualified business assets will begin phasing out.
Jan. 1, 2026	Section 199A deduction for pass-through entities expire.
Individuals	
Jan. 1, 2026	Certain international tax provisions will become more restrictive (GILTI, FDII, BEAT): • GILTI: Rate increase from 10.5% to 13.125%. • FDII: Rate increase from 13.125% to 16.406%. • BEAT: Rate increase from 10% to 12.5%.

Corporate Tax Proposals

Incentivize Job Creation in the U.S. and Improve the Economy

Made in America tax credits.

100% expensing for certain industries (pharmaceuticals and robotics) that bring manufacturing jobs back to the U.S.

Tax credit for companies that bring home jobs from China specifically.

Tax cuts for companies that retain U.S. jobs. Specifically, halving the corporate tax rate to 10.5% for firms that relocate operations to the U.S.

Further reduce the corporate tax rate.

A 15% corporate rate was considered in 2017, but never gained any traction. This seems very unlikely.

A 20% corporate rate was considered more recently in 2020, possibly to curb the impact of COVID-19.

Corporate Tax Proposals

Discourage Continued Offshoring of Jobs

- Tariffs on companies that do not bring jobs back to the U.S.
  - *"We will give tax credits to companies to bring jobs back to America, and if they don't do it, we will put tariffs on those companies."* –President Donald Trump, Aug. 21, 2020.
  - *"Trump tariffs [are] … a powerful inducement for investment in domestic production by both American companies that have offshored our factories and foreign companies that want to sell into the U.S. market."* –Director of Trade and Manufacturing Policy, Peter Navarro, Aug. 21, 2020.
  - No details have been provided on how the system would work.

- Prohibit federal contracts for companies that outsource to China.

Corporate Tax Proposals

Additional GOP Proposals

- **Innovation and Competitiveness**
  - Continue allowing the expensing of R&D costs in the year incurred, instead of amortizing over a five-year period beginning in 2022 (***The American Innovation and Competitiveness Act***).
  - Doubling the R&D tax credit (***Pushing Research and Development into Hyperdrive Act***).
  - Special tax treatment to help offset start-up costs (***The American Innovation Act of 2020***).
  - A 40% semiconductor investment tax credit (***CHIPS for America Act***).

- **"Made in America" – Incentivize Job Creation in the U.S.**
  - Bolster manufacturing of PPE in the U.S. with a 30% tax credit (***U.S. Made Act***).
  - Lower the tax rate from 21% to 10.5% for domestic manufacturing and sales of active pharmaceutical ingredients and medical countermeasures (***Domestic Medical and Drug Manufacturing Tax Credit Act***).
  - Repatriating IP developed offshore at no U.S. tax cost (***Bringing Back American Jobs Through IP Repatriation Act***).

Individual Proposals—TCJA Permanence and More

TJCA Proposal (Current Law)	Trump Proposal
Top Rate. Top rate of 37%—other rate brackets are 10%, 12%, 22%, 24%, 32% and 35%.	Earlier this year, the administration promised a Tax Cuts 2.0 plan that would cut the tax rate by 10% for middle-income taxpayers. In late 2019, Larry Kudlow suggested a 15% bracket, which could be achieved by consolidating the 22% and 24% brackets.
Itemized Deductions. Taxpayer may deduct the greater of (1) the standard deduction; or (2) the sum of the itemized deductions, with no cap on the latter through 2025. State and local tax (SALT) payments are deductible up to $10,000, with the cap expiring after 2025.	Extend the TCJA's provisions for years after 2025.
Estate Tax. The TCJA increased the estate tax exemption from $5 million to $11 million, and increased it for inflation in subsequent years.	Extend the TCJA's provisions for years after 2025.
Sec. 199A. Creates a Qualified Business Income deduction that allows eligible taxpayers to deduct up to 20% of their QBI plus 20% of qualified REIT dividends and qualified publicly traded partnership income.	Extend the TCJA's provisions for years after 2025.

Individual Proposals—Other Trump Proposals

Investments

- **LTCG:** Potential cuts to the current 20% long-term capital gains (LTCG) rate either through a rate reduction, or by indexing capital gains to inflation.
- **Opportunity Zones:** Potential unspecified expansion of the TCJA's opportunity zone program. The House plan would make permanent Opportunity Zone credits that generate $10 billion each year in poor communities.

Education Freedom Scholarships: Creates a federal tax credit for voluntary donations by individuals or businesses to state-authorized nonprofit organizations that grant "Education Freedom Scholarships." A taxpayer who donates to one of these organizations and receives the tax credit cannot also claim that donation as an itemized charitable deduction.

Assistance for Families:

- **Paid Leave:** Allows parents to advance $5,000 from their Child Tax Credit upon the birth or adoption of a child to cover the cost of parental leave.
- **Child Tax Credit:** Further expansion of the CTC.

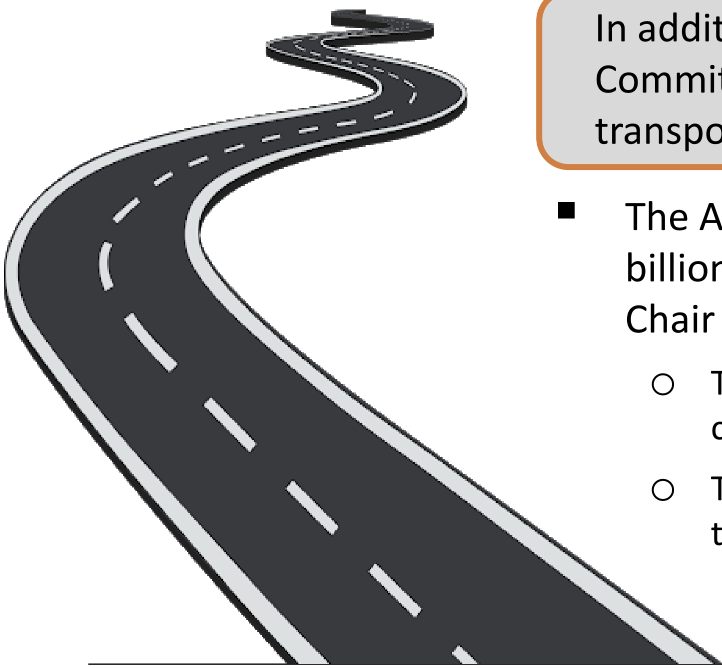
Payroll Tax:

- The president's Aug. 8 Executive Order calls for the ***voluntary*** deferral of the withholding, deposit and payment of the employee portion of the 6.2% Old Age, Survivors, and Disability Insurance (OASDI) segment of Federal Insurance Contributions Act (FICA) taxes imposed by I.R.C. § 3101(a)—often referred to as Social Security taxes. The deferral applies to workers earning less than $4,000 during a biweekly pay period. All deferred amounts must be repaid.
- The president has said he will forgive deferred taxes if re-elected.
- Rep. Kevin Brady (R-TX), ranking member of the House Ways and Means Committee, has released a proposal that would create a payroll tax holiday from Sept. 1 through Dec. 31.
- The president has also suggesting "boosting take-home pay," but has not specified whether he will do this through a payroll tax cut.

Infrastructure

President Trump supports $1 trillion in infrastructure spending.

- He has not yet released an infrastructure plan but is likely to focus most federal funding on projects to support traditional infrastructure, such as improvements to roads and bridges.
- He previously called for a $2 trillion investment in infrastructure and may support a figure closer to this sum in the future.
- A package may also include some funding for rural broadband and 5G deployment.



In addition to President Trump's infrastructure goals, the Senate Committee on Environment and Public Works advanced a surface transportation reauthorization in July 2019.

- The America's Transportation Infrastructure Act of 2019 is a $287 billion reauthorization bill introduced by Sen. John Barrasso (R-WY), Chair of the Environment and Public Works Committee.
  - The bill is a traditional, five-year highway bill and was advanced out of committee on a bipartisan vote.
  - The full Senate has not voted on it because it lacks a funding title, which the Senate Finance Committee is responsible for drafting.
    - Some Republicans have expressed interest in adopting a vehicle miles traveled (VMT) fee to support the Highway Trust Fund.

Infrastructure

American Infrastructure Initiative. In February 2018, President Trump released a $200 billion infrastructure initiative designed to spur at least $1.5 trillion in infrastructure investments with partners at the state, local and private levels.

- **Incentive Program.** $100 billion for an Incentive Program designed to encourage state and local government and private sector investment;
- **Transformative Projects Program.** $20 billion for "bold and innovative projects;"
- **Infrastructure Financing.** $20 billion for existing credit programs, such as Transportation Infrastructure Finance and Innovation Act;
- **Federal Capital Revolving Fund.** $10 billion for a new Federal Capital Revolving Fund designed to "reduce inefficient leasing of Federal real property which would be more cost-effective to purchase"; and
- **Rural America's Infrastructure Program.** $50 billion for a new program that would allocate flexible funds to states so they could prioritize infrastructure needs.

Infrastructure– Tax Priorities. The administration also released an outline for financing infrastructure legislation:

- **Expanded PAB Eligibility.** The administration would broaden private activity bonds (PABs) to include a range of additional infrastructure projects, such as rural broadband and flood control, for example;
- **Eliminating AMT Preference on PABs.** The administration would eliminate the 0.30%–0.40% yield premium on the borrowing rate for PABs due to the PAB Alternative Minimum Tax (AMT);
- **Preserving Tax-exempt Status of Governmental Bonds.** The administration would :
  - Allow alternative business use of public projects in a manner that would qualify as an infrastructure project eligible for a new issuance of PABs; and
  - Allow businesses to "recycle" the total present value of private lease payments into public and governmental uses within two years to retain tax-exempt status of associated debt obligations.

Other Infrastructure Financing Positions. President Trump has supported increasing the gas tax, a proposal supported by the U.S. Chamber of Commerce.

Energy

- **Regulatory Updates.** If President Trump is reelected, he is likely to continue his approach on updating regulations on energy- and environmental-related issues in order to further his goal of energy dominance.
  - The administration has revised numerous environmental and energy regulations such as the Waters of the United States (WOTUS) regulation, Affordable Clean Energy (ACE) rule and leasing a portion of the 1002 area of the Arctic National Wildlife Refuge (ANWR).
  - President Trump has emphasized project development and more efficient environmental reviews and project timelines.

- **Furthering Project Development.** President Trump's updated regulation of the National Environmental Policy Act (NEPA) will result in agencies meeting more deadlines and providing project proponents' certainty of having a decision and providing regulatory certainty.

- **International.** President Trump will likely continue to push American liquefied natural gas as a tool in foreign policy and as an alternative to Russian natural gas for our European and Asian allies.
  - President Trump will continue to push sanctions to prevent the completion of the Nord Stream 2 pipeline.

Energy

- **Energy Committee Leadership Shakeup.** The top Republicans on the Senate and House energy and natural resources committees will be vacating their posts at the end of the session, meaning new leadership.

  – **Senate Energy and Natural Resources.** Prevented by term limits from serving again as the top Republican on the committee, Chair Lisa Murkowski (R-AL) will be giving up the gavel in 2021.
    - Sen. John Barrasso (R-WY), currently the chair of the Senate Environment and Public Works Committee, is expected to replace Sen. Murkowski. Barrasso has prioritized nuclear energy and carbon capture technologies as solutions to climate change. Sen. Barrasso has long been a champion of oil and gas, coal and wind and will want to see more activity on public lands. During his tenure as chair of the Senate Indian Affairs Committee, he advanced legislation encouraging more widespread energy development on those lands.

  – **House Energy and Commerce Committee.** The top Republican on the committee, Rep. Greg Walden (R-OR), announced in October 2019 he would be retiring at the end of 2020. The favorites to replace him are Reps. Cathy McMorris Rodger (R-WA) and Bob Latta (R-OH).

  – **House Natural Resources Committee.** Rep. Rob Bishop (R-UT) is retiring, opening up the Ranking Member slot. A number of members will have interest with Reps. Bruce Westerman (R-AR), Tom McClintock (R-CA) and Paul Gosar (R-AZ) considered the favorites.

Energy

- On renewable energy, President Trump has produced mixed results. On the negative side, his tariffs have hurt solar companies. On the other hand, the Department of the Interior has approved major wind and solar projects on federal lands and the Department of Treasury updated guidance making onshore wind eligible for the extension of the Investment Tax Credit (ITC).

Congress and the Trump administration will likely take up a tax bill that in its final iteration will include compromise language on renewable incentives.

The Trump administration would continue to deny California a waiver to set their own fuel standards for vehicles under the Clean Air Act. With Gov. Newsom's announcement for California to end sales of fossil-fueled vehicle sales, this sets up potentially one of the largest battles in the environmental space for the second term.

Regulatory Reform

- Trump has promoted regulatory reform as a means to facilitate economic growth.
- He will pursue (1) streamlining regulations; and (2) interpreting regulations to promote investment and capital formation.
  - Streamlining regulations will entail developing safe harbors that permit taxpayers to claim credits, deductions and exclusions.
  - Regulatory changes to promote growth could include defining capital gains to be computed after indexing the basis of assets for inflation.
  - While the former is likely to go unchallenged, the capital gains proposal would be litigated by congressional Democrats and, ultimately, decided by the courts.
  - The administration would seek to remove regulatory burdens that reduce economic activity.

Budget Solvency

Republicans are undecided when it comes to addressing budget solvency.

- **No Offsets for Tax Cut Permanence.** After House Republicans unveiled their "Commitment to America" framework, House Ways and Means Committee Ranking Member Kevin Brady (R-TX) said the following when asked if the Republican plan contained offsets for making the TCJA individual tax cuts permanent:
  - *"If [a] pay-for includes raising taxes on other Americans—just to keep them low for other Americans—**from a Republican standpoint, no**. This is a pretty modest investment in permanency for families and local businesses that will generate a million and a half new jobs, and it's even more important now given the pandemic's damage to the economy."*

- **Short-Term COVID-19 Spending.** Republicans in both the House and Senate are growing increasingly concerned about spending in response to the COVID-19 pandemic. The HEALS Act proposed by Senate Republicans in late July contained $350 billion in offsets, indicating any additional COVID-19 response will require payfors in order for Republicans to sign on.
  - **Counter-Point—Mnuchin Not Worried Now.** Treasury Secretary Steven Mnuchin said in mid-September: *"Now is not the time to worry about shrinking the deficit or shrinking the Fed balance sheet."*

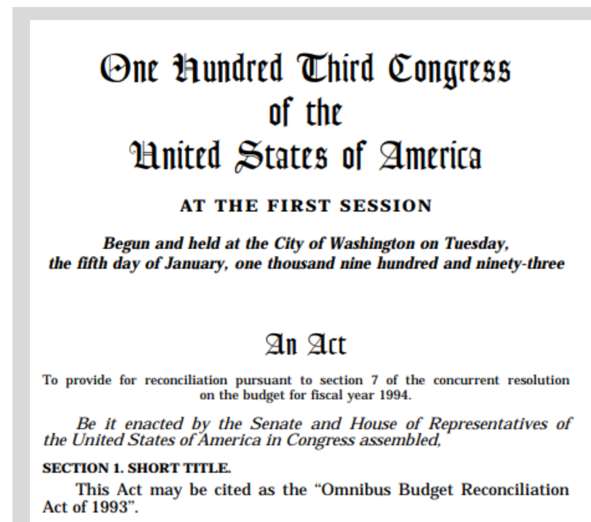
GOP Tax Legislation in 2021

- Because the Republicans are almost certain to have less than 60 members in the Senate, the GOP will have to do one of two things in order to enact most of their tax agenda:

1. Change Senate rules to eliminate the filibuster. → Unlikely
2. Pass a budget authorizing tax cuts. → Likely

- Republicans will likely use Budget Reconciliation to push through TCJA permanence and potentially other corporate tax measures as well.

- Republicans will seek to extend expiring TCJA provisions for as long as possible in order to provide certainty for individuals and businesses. However, they will only be able to extend the provisions until 2028 or 2029 under reconciliation.


One Hundred Third Congress
of the
United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the fifth day of January, one thousand nine hundred and ninety-three

An Act

To provide for reconciliation pursuant to section 7 of the concurrent resolution on the budget for fiscal year 1994.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Omnibus Budget Reconciliation Act of 1993".

Options for Revenue Reconciliation Legislation—All About Tax

Corporate Tax

- Extend expiring TCJA provisions.
- Create new tax credits for domestic research, manufacturing and innovation activity.
- Could increase taxes on offshoring operations.

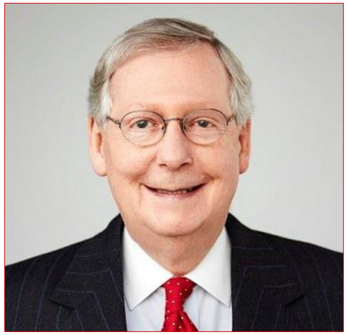
Individual Tax

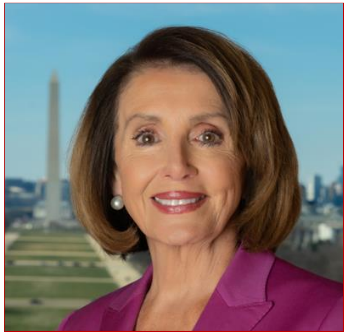
- Extend TCJA individual provisions to at least 2029.
- Likely to include additional middle class tax cuts.
- Could include reductions in capital gains tax.

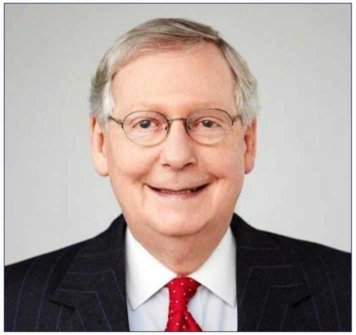
What Divided Control of Washington Could Bring in 2021

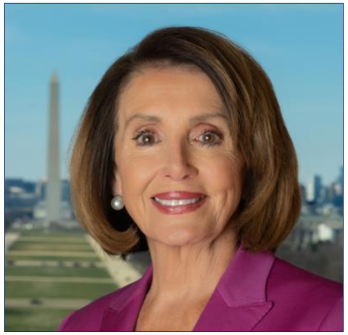
Scenario: Divided Government

- The most likely outcome of the November election is a continuation of divided government. While there are several ways this could occur, the two most likely scenarios are as follows:









Divided Government Tax Legislation

- In a divided government, only consensus legislation can be enacted.
  - Proposals supported by only one party will not be enacted.
  - Democrats will not be able to undo 2017 TCJA provisions and will not be able to enact expansions of individual refundable tax credits.
  - Republicans will not be able to enact TCJA extensions or tax legislation that benefits wealthier Americans or businesses.

Possible Consensus Legislation

COVID-19 Relief and Rebuilding the Economy. Several bipartisan tax proposals are possible for an early 2021 package: employment incentives, COVID-19 prevention incentives, and liquidity proposals.

Transportation/ Infrastructure Finance. Congress historically has coupled surface transportation legislation with extension of transportation excise taxes, tax-favored bond financing and bipartisan energy tax legislation.

Corporate Taxation. Both parties might pursue legislation on:

- **Reshoring Research and Manufacturing.** Both parties have suggested tax incentives for moving research and manufacturing to the U.S.
- **International Tax Battles.** Republicans and Democrats agree that any OECD global minimum tax proposal will need to be fair to U.S.-based companies. The response may be to support the Administration but could include legislation as well.

Tax Extenders. Both parties are likely to address tax extenders legislation, bipartisan tax breaks that expire at the end of 2020, 2021, or 2022, depending on the provision.

COVID-19 Relief and Rebuilding the Economy

Bipartisan tax provisions that could be included in a potential COVID-19 stimulus bill:

Employee Hiring and Retention

- Tax credits, such as an expansion of the Employee Retention Tax Credit, for businesses who commit to helping workers stay employed through the crisis.
- Hiring tax credit such as an expansion of the Work Opportunity Tax Credit to include workers who were receiving unemployment assistance.

COVID-19 Prevention and Other Assistance

- Cleaning tax credit to help businesses implement new health and safety protocols.
- Employment tax rules to accommodate working from home.
- Business restructuring tax incentives to adapt to state/local regulatory guidance on business operations.

Unemployment

- Unemployment benefits that are efficiently delivered to those who lose jobs due to the pandemic.

Liquidity

- Acceleration of general business credits.
- Additional $1,200 relief checks for individuals and families, if bad economic conditions persist.
- Paycheck Protection Program (PPP) second draw and loan forgiveness.

Infrastructure

- **Surface Transportation Reauthorization.** Lawmakers reauthorized the Fixing America's Surface Transportation (FAST) Act (P.L.114-94) for one year through Sept. 30, 2021.

- **Democrats.** On July 1, the House passed the Democrats' Moving Forward Act (H.R.2), a $1.5 trillion comprehensive infrastructure package that includes investments in schools, housing, broadband, green energy and child care.
  - Financing mechanisms include reinstating Build America Bonds and Advance Refunding Bonds.
  - The financing section does not contain tax increases.

- **Republicans.** The Senate Environment and Public Works Committee approved the America's Transportation Infrastructure Act (S.2302) in August 2019.
  - The $287 billion reauthorization bill has since stalled because it lacks a funding title, which the Senate Finance Committee is responsible for drafting.

Infrastructure Proposals

President Donald Trump

- Repair and upgrade traditional infrastructure;
- Provide funding for rural **broadband** and 5G deployment;
- Incentivize infrastructure investments with partners at the state, local and private levels;
- Create a new federal **Capital Revolving Fund** designed to "reduce inefficient leasing of Federal real property which would be more cost-effective to purchase"; and
- Broaden **private activity bonds** (PABs) to include a range of additional infrastructure projects.

Former Vice President Joe Biden

- Update roads, bridges and electric grids;
- Expand access to **broadband;**
- Enable the creation of 1.5 million **sustainable homes** and housing units;
- Create 1 million jobs in the auto industry and increase the demand for American-made, American-sourced **clean vehicles;**
- Construct 500,000 electric vehicle charging stations; and
- Upgrade 4 million buildings and weatherize 2 million homes over four years.

Incentives to Reshore Manufacturing

- A 30% manufacturers credit for qualifying medical PPE production in the U.S.
- CHIPS Act: 40% investment tax credit for qualified research and manufacturing costs related to semiconductor equipment or manufacturing facilities.

President Donald Trump	Former Vice President Joe Biden
• Provide tax credits for companies that return operations to the U.S. from China; • Enact “Made in America” tax credits; • Allow full expensing for companies in “essential industries like pharmaceutical and robotics” that return manufacturing operations to the U.S.; • Withhold federal contracts from companies who outsource operations to China; • Support “Buy American” mandates for some products purchased by certain federal agencies.	• Impose stricter “Buy American” requirements; • Incentivize partnerships with smaller manufacturers and those owned by women and people of color; • Establish a credit facility to supply small-medium manufacturers with capital to support U.S. operations; • Expand the Manufacturing Extension Partnership program; and • Enact a manufacturing tax credit to promote “revitalizing, renovating, and modernizing existing – or recently closed down – facilities.”

Possible International Tax Proposals

- Impose restructuring taxes on businesses who move U.S. headquarters offshore.
- Impose a new 10% “offshoring penalty surtax” on U.S. companies that make products overseas and sell back into the U.S.
- Fighting OECD-led efforts on global minimum taxes.

Tax Extenders – Business Provisions Expiring in 2020-2022

- Tax extenders were most recently included in the Further Consolidated Appropriations Act, 2020 (P.L. 116-94).

Business Investment	
Special expensing rules for certain film, television, and live theatrical productions	2020
Seven-year recovery period for motorsports entertainment complexes	2020
Three-year depreciation for race horses two years or younger	2020
Accelerated depreciation for business property on an Indian reservation	2020
Economic Development	
Empowerment zone tax incentives	2020
American Samoa economic development credit	2020
New markets tax credit	2020
12.5% increase in low-income housing tax credit (LIHTC) authority	2021
Other Business-Related Provisions	
Indian employment tax credit	2020
Mine rescue team training credit	2020
Employer tax credit for paid family and medical leave	2020
Work opportunity tax credit	2020
Look-through treatment of payments between related controlled foreign corporations	2020
Provisions modifying excise taxes on wine, beer, and distilled spirits	2020
The run cover	2021
Credit for certain expenditures for maintaining railroad track	2022

Tax Extenders – Energy Provisions Expiring in 2020-2023

Renewable Electricity	
Production Tax Credit	2020
Investment Tax Credit	2021
Five-Year Recovery Period for Certain Energy Property	2021
Alternative and Renewable Fuels	
Second Generation Biofuel Producer Credit	2020
Special Depreciation Allowance for Second Generation Biofuel Plant Property	2020
Incentives for Alternative Fuel and Alterative Fuel Mixtures	2020
Incentives for Biodiesel and Renewable Diesel	2022
Vehicle and Vehicle Refueling Property	
Alterative Motor Vehicle Credit for Qualified Fuel Cell Vehicles	2020
Alternative Fuel Vehicle Refueling Property	2020
Credit for Two-Wheeled Plug-In Electric Vehicles	2020
Trust Fund Dedicated Excise Taxes	
Black Lung Disability Trust Fund	2020
Oil Spill Liability Trust Fund Financing Rate	2020
Building Energy Efficient	
Section 25C Nonbusiness Energy Property Credit	2020
Construction of energy-Efficient New Homes Credit	2020
Energy-Efficient Commercial Building Deduction	2020
Credit for Residential Energy Property	2021
Other Energy Tax Provisions Expiring	
Production of Indian Coal Credit	2020
Special Rule to Implement Electric Transmission Restructuring	2020
Carbon Oxide Sequestration Credit	2023

Tax Extenders – Individual Provisions Expiring in 2020

- The following individual tax extenders provisions expire at the end of 2020.

Individual Provisions Scheduled to Expire in 2020
Exclusion from gross income of discharge of indebtedness on qualified principal residence
Mortgage insurance premiums treated as qualified residence interest
Medical expense deduction for expenses in excess of 7.5% of adjusted gross income
Above-the-line deduction for qualified tuition and related expenses
Black Lung Disability Trust Fund - increase in amount of excise tax on coal
Indian employment tax credit