

FUTURE OF TAX POLICY: PRESIDENT TRUMP & JOE BIDEN

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OVERVIEW

President Trump continues to expound the success of the Tax Cuts and Jobs Act (TCJA) and has made it one of the top accomplishments of his presidency. The President has continually promoted the 2017 tax cuts as a fundamental reason the economy expanded before the COVID-19 outbreak and has called for new and expanded tax cuts to stimulate current economic recovery efforts. If re-elected, he would continue to closely adhere to conservative tax priorities and have wide support from his Republican Congressional allies.

Joe Biden's tax policies are progressive, as he would attempt to increase revenue by \$4 trillion in addition to calling for significant government investments in infrastructure, health care, senior care, elder care, clean energy technology, manufacturing, and assistance for low-income families. He continues to advocate to repeal large parts of the TCJA, increase taxes for businesses and certain high-wealth individuals, as well as provide new tax credits and deductions for industries and individuals he aims to aid with various economic stimulus plans.

Achievable tax changes under either President Trump or Joe Biden will be determined not only by who is in control of the Senate or House of Representatives, but it will also be guided by future economic conditions.

HOW PRESIDENT TRUMP'S TAX PRIORITIES MIGHT BE FULFILLED

Republicans have traditionally been successful in achieving tax modifications. This has been done through budget reconciliation as authorized by the Congressional Budget Act of 1974, which allows certain legislation to pass by a majority vote in the Senate and not be subject to a filibuster. Budget reconciliation is meant to enhance compliance with fiscal priorities by altering spending, revenue, and debt limits. This process has been used 21 times to pass reconciliation measures into law. The most recent examples being in 2017 when Republicans passed the Tax Cuts and Jobs Act (P.L. 115-97) and in 2010 when Democrats passed the Patient Protection and Affordable Care Act (P.L. 111-148). The use of reconciliation would only come into play should the White House, Senate, and House be in Republican control next year.

Even with the currently divided 116th Congress, the President has been successful in securing bipartisan tax changes, such as those achieved through the Setting Every Community Up for Retirement Enhancement Act (SECURE Act). Tailored and consensus-driven tax changes remain possible for President Trump through various legislative packages that may be developed next Congress.

President Trump has also shown that he is willing to change tax rules unilaterally in the absence of Congressional action. The use of that authority may be further tested and expanded in a second term. Such action may create an environment that fosters a need for Congressional action.

HOW JOE BIDEN'S TAX PRIORITIES MIGHT BE FULFILLED

If Democrats are successful in taking control of the White House, the Senate, and maintaining the majority of the House of Representatives, then significant changes to the tax code might be expected. Biden and Democratic leaders in Congress could have several options to make their mark on the tax code if this sweep is achieved.

As was mentioned before for Republicans, Democrats may also choose to use budget reconciliation to achieve considerable tax changes. Consideration of reconciliation legislation is often only available once per year. Biden and Congressional Democrats will have to make a determination if other policy priorities, such as health care reform, will supersede standalone tax restructuring through the use of reconciliation.

The second method Congressional Democrats may implement in order to change significant portions of the tax code is by reforming the Senate filibuster, which instills a 60 vote filibuster threshold for passage of legislative measures. Several prominent Democrats, such as former President Obama and Senator Elizabeth Warren (D-MA), have called for eliminating the filibuster. Presidential nominee Biden has also signaled his openness to support an end to the current filibuster rule if his agenda is stymied by Senate Republicans in the future. Should the filibuster be reformed, time and logistical constraints are removed and multiple tax restructuring bills may be considered throughout the 117th Congress.

Finally, should Democrats significantly increase their numbers in the Senate, it is possible that minor tax changes could take place as part of larger legislative initiatives with Republicans, such as an infrastructure stimulus package. This would not need budget reconciliation or reforms of the filibuster. However, it would require extensive negotiations with some Congressional Republicans, which has not shown much success in the current 116th Congress. Democratic priorities would have to be traded for Republican priorities, further complicating the process. This is often the scenario that has played out with health care and regulator tax extenders packages.

WHAT PRESIDENT TRUMP'S TAX POLICY COULD LOOK LIKE

For a second term, the President has continually asserted that further tax modifications will be a major goal of his Administration. The President has expressed a desire to extend several provisions of the TCJA as well as provide additional business and individual tax cuts.

During the 2020 campaign, the President has focused his tax policies on bringing jobs back domestically from other countries, specifically from China. As previously demonstrated, the President is also likely to continue his use of tariffs or the threat of potential tariffs against other countries in a second term.

WHAT JOE BIDEN'S TAX POLICY COULD LOOK LIKE

The scale and scope of tax policy next Congress will be influenced by the size and makeup of the members of the Democratic caucus and by the margin of victory Biden might achieve. The more Democratic members that secure Senate seats in November, the more aggressive a tax restructuring effort will be. If Democrats are only able to secure a slim majority in the Senate then several center-left members of the Democratic conference will have their hand strengthened in any tax policy negotiations. Should Democrats secure a more comfortable majority in the Senate, tax policy restructuring may be more aggressive with Democratic leaders securing the increased flexibility to negotiate with more left-leaning members.

It is worth observing the size of a potential Biden victory as well as the makeup of House Democratic members next Congress. Should Biden win with a significant margin and the House Democratic caucus grows more left-leaning, the likelihood and size of tax rearrangements will grow significantly more progressive. Biden could feel emboldened to promote changes and Democrats could be more eager to roll back TCJA and Bush-era tax laws in order to input their own priorities.

Congressional Democratic leaders are already eager to make their impressions on the tax code and would be keen and willing to advance tax altering legislation with Biden. Congressional Democratic leaders such as House Speaker Nancy Pelosi (D-CA), Senator Chuck Schumer (D-NY), Senator Ron Wyden (D-OR), and Representative Richard Neal (D-MA) are in near agreement to repeal major portions of the TCJA. Sen. Schumer is particularly interested in repealing the current cap on the state and local tax (SALT) deduction and Sen. Wyden has made it his priority to promote clean energy incentives as well as make significant changes to individual tax breaks such as capital gains.

TRUMP BUSINESS TAX POLICY PROPOSALS

General Business Provisions	Domestic Production Tax Credit: Create a “Made in America” tax credit for companies that bring back jobs domestically, with specific emphasis on returning jobs from China
	Expensing: Allow 100% expensing for certain industries that bring back jobs to the US
	Opportunity Zones: Expanded
Industry Specific	Education: Create a tax credit for a federal Education Freedom Scholarship program
	Energy - Electric Vehicle Tax Credit: Eliminated
	Energy - Investment Tax Credits: Repeal of investment tax credits for clean energy equipment installations for homes and businesses
	Energy: Repeal accelerated depreciation of renewable energy property

TRUMP INDIVIDUAL TAX POLICY PROPOSALS

Individual	TCJA: Extend individual income tax cuts, increase the standard deduction, and expanded child tax credits
	Middle-Class Tax Rate: Reduced by an unspecified amount
	Capital Gains Tax Rate: Reduced from 20% to 15%
	Payroll Tax: Forgiveness for the September 1 through September 31, 2020 payroll tax deferral as well a permanent payroll tax cuts

BIDEN BUSINESS TAX POLICY PROPOSALS

General Business Provisions	Top Corporate Tax Rate: Increase to 28% from 21%
	Corporate Minimum Tax: Establish a 15% tax on global income above \$100 million
	Global Intangible Low-Taxed Income (GILTI): Increase to 21% from 10.5%
	Childcare Facility Tax Credit: New credit to build childcare facilities at work buildings
	Americans with Disabilities Act (ADA) Compliance: Increase small business tax credits to improve accessibility
	Disability Hiring Tax Credit: Create a \$5,000 tax credit for the first year, \$2,500 for the second year
	Workplace Accessibility Tax Credit: Up to \$30,000
	Health Care Benefits: Create a refundable business tax credit to cover the costs of providing full health benefits to all workers during a period of work hour reduction
	Work Opportunity Tax Credit (WOTC): Expanded to include military spouses
	Moving Jobs Overseas: Establish a 10% tax penalty on US companies that relocate overseas
	Job Creation Credit: Create a 10% tax credit for companies that invest in domestic production
	Offshore Manufacturing Tax: Establish a 30.8% tax on profits generated from goods manufactured outside of the US, but sold in the US

Industry Specific	Energy - Clean Energy: Tax incentives extended and reformed for clean energy producers
	Energy - Research & Development Tax Credits: Increased for technology that captures and utilizes carbon
	Energy - Equipment, Factory, Process Energy Efficiency Tax Credits: Created to deploy low-carbon technologies
	Energy - Fossil Fuels: Current “subsidies” eliminated
	Energy - Electric Vehicle Tax Credit: Restored
	Energy - Expanded Energy Efficiency Tax Credits: Incentives energy efficiencies retrofits, small metering systems, and general emissions-reducing equipment in commercial buildings
	Energy - Residential Energy Efficiency Tax Credits: Reinstated
	Energy - Investment Tax Credit: Solar credit extended
	Health Care - US Pharmaceutical Production Tax Credits: Reform current credits that might incentive production overseas and credit new tax incentives for US production
	Health Care - Drug Prices: Create new tax penalties on manufacturers that increase the cost of brand, biotech, generic drugs over the general inflation rate
	Health Care - Drug Advertising Tax Deduction: Eliminated
	Economic Development - New Markets Tax Credit (NMTC): Made permanent and expanded
	Economic Development - Low-Income Housing Tax Credit (LIHTC): Expanded
	Economic Development - Opportunity Zones: Reformed to prevent exploitation and require increased reporting requirements on project impacts on local residents, poverty status, housing affordability, and job creation
	Economic Development - Like-Kind Exchanges: Eliminated
Manufacturing - Manufacturing Communities Tax Credit: Create a new credit that is meant to invest in communities that are experiencing the closure of a major facility	

BIDEN INDIVIDUAL TAX POLICY PROPOSALS

Individual	Top Individual Tax Rate: Raised to 39.6% for filers reporting more than \$400,000 in income
	Qualified Business Income (QBI) Deduction: Phased out for filers reporting more than \$400,000 in income
	Capital Gains and Dividends: Increased to 39.6% for filers reporting more than \$1,000,000 in income and includes additional reforms for high wealth individuals
	Itemized Deductions: Benefits capped at 28% of value and phased out for filers reporting more than \$400,000 in income
	Caregivers Tax Credit: \$5,000 credit created
	Earned Income Tax Credit (EITC): Expanded to older workers
	Payroll Taxes: Increased for workers reporting more than \$400,000 in income
	Child and Dependent Care Credits: Increased to \$8,000 and turned into an advance credit
	First-Time Homebuyers Tax Credit: \$15,000 refundable tax credit created
	Renters Tax Credit: Created for low-income individuals who do not qualify for a Section 8 housing vouchers
	Down Payment Tax Credit: Create a new advanceable tax credit for a home purchase or rent
	Distressed Property Remodeling Tax Credit: Created
	Student Loan Debt Forgiveness: Won't be taxed
Death and Estate Taxes: Treated as a realization event for capital gains	