A LOOK AHEAD

For EOs, Changing Policies In 2020 Won't Be Easy

by Fred Stokeld

Representatives of the nonprofit sector foresee efforts in 2020 to undo or modify portions of the Tax Cuts and Jobs Act that many believe are having an adverse effect on tax-exempt organizations and charitable giving.

However, some doubt the efforts will get very far.

That 2020 is an election year means few votes will be taken in Congress, and few if any of those votes will be controversial, according to Alexander L. Reid of Morgan, Lewis & Bockius LLP.

Because Congress passed the TCJA in 2017 using budget reconciliation without Democratic support, Democrats are now requiring that any changes to the act be paid for with new revenue raisers, even if they agree with the technical correction or change in policy, Reid explained.

"New revenue raisers are always controversial, so that makes it hard to do a pure tax bill," Reid told *Tax Notes*.

Charities would like Congress to enact a universal charitable deduction available to both itemizers and non-itemizers, said David L. Thompson of the National Council of Nonprofits. The idea has gained popularity in light of the TCJA, which doubled the standard deduction and included other measures that he said are adversely affecting donations to smaller, front-line charities.

"2020 will be devoted to building support for this essential solution," Thompson said. He also expressed support for a temporary universal or non-itemizer deduction for disaster relief and recovery donations.

On the regulatory front, several projects addressing the TCJA's provisions affecting EOs are on the latest Treasury-IRS priority guidance plan. But Reid predicted that instead of precedential guidance, there may be more subregulatory notices from the IRS and Treasury on TCJA provisions.

"Because these notices do not have the effect of regulations and can therefore be ignored, they will inevitably be taxpayer favorable," Reid said.

One TCJA provision EOs no longer have to worry about is section 512(a)(7), which applies the unrelated business income tax to parking and other transportation benefits that nonprofit employers provide to their employees. A provision repealing section 512(a)(7), which nonprofits derided as burdensome and unfair, was included in the tax and spending package signed by President Trump December 20.

What Else They'd Like to See

Repealing section 512(a)(6), commonly known as the "silo tax," is a goal of nonprofits in 2020. The TCJA provision prevents EOs from offsetting gains with losses.

"The silo tax forces nonprofits — but not for-profits — to keep every trade or business separate for accounting and tax purposes and pay taxes on each separately," said Thompson, who called the provision "punitive."

It's possible the IRS and Treasury will issue a notice clarifying whether investment income and other unrelated business taxable income that doesn't arise from a trade or business must be confined to a silo, Reid said.

Reid also predicted that the IRS might issue a notice addressing a major concern about section 4960, which imposes a 21 percent excise tax on applicable tax-exempt organizations (ATEOs) for compensation above $1 million. The concern is that ATEOs affiliated with a private corporation could be subject to the tax if that company's officers also volunteer as officers for the ATEO, even if the ATEO doesn't compensate them.

Meghan R. Biss of Caplin & Drysdale Chtd. said that in 2020, there probably will be proposed regulations from the IRS on sections 512(a)(6) and 4960.

Determination Letters, Examinations

There likely will be major changes to the IRS EO determinations process if the electronic Form 1023 exemption application rolls out as anticipated, Biss said.

That would free up additional IRS resources for increased examinations of EOs, according to

Biss. She added that she believes Tamera Ripperda, IRS Tax-Exempt and Government Entities Division commissioner, and Margaret Von Lienen, EO director at TE/GE, who both have examinations backgrounds, "would like to reduce the time and effort spent on determinations and instead focus their resources on examining potentially noncompliant entities." ■

A LOOK AHEAD

Democrats to Stand Behind Wealth Taxes in 2020

by Jad Chamseddine

Democrats will focus their efforts on fixing inequalities in the tax code ahead of the 2020 election as concerns with the Tax Cuts and Jobs Act have hampered progress with current tax legislation.

With the year drawing to a close, legislation to extend expiring and expired tax credits claimed by corporations has stalled in Congress. House Democrats have made it a point not to extend those credits without improving benefits for low- and middle-income households through provisions such as the earned income tax credit and the child tax credit (CTC).

Rep. Pramila Jayapal, D-Wash., co-chair of the Congressional Progressive Caucus, told *Tax Notes* that it is the group's priority to invest in the country. "This will be done by taxing fairly the wealthiest of corporations," she said.

The progressive caucus may not be on the same level as the rest of the Democratic Party when it comes to taxing the wealthy, but as one of the largest caucuses, it can sway popular opinion. Jayapal said rank-and-file Democrats appear to be moving in that direction as more people start arguing about wealth taxes and the fairness of the American tax system.

Jayapal said inequality and the unfairness of the tax system, coupled with the subsidies received by large corporations, are prominent topics in town halls across the country.

> ***The progressive caucus may not be on the same level as the rest of the Democratic Party when it comes to taxing the wealthy, but as one of the largest caucuses, it can sway popular opinion.***

"Most of our members in the progressive caucus believe that we don't have an issue of scarcity in this country, but an issue of greed," Jayapal said.

The caucus's members on the House Ways and Means Committee have pushed that narrative in