

Tax Agenda for 2019 Starts with “Member Education;” i.e., Hearings



The tax writers at House Ways & Means are laying the groundwork for an ambitious tax agenda later this year, or perhaps next year, by holding hearings on a wide range of tax issues in the early months of 2019. There have already been hearings on retirement savings, infrastructure financing, middle class taxes, Medicare drug prices, trade and the potential need to require disclosure of tax returns by presidential and vice-presidential candidates.

Upcoming hearings are scheduled on Social Security, temporary tax policy, and the President’s fiscal year (FY) 2020 budget. Further, although not yet scheduled, Ways & Means Committee staffers are planning a hearing on the impact of the Tax Cuts and Jobs Act (TCJA), particularly with respect to income inequality. Other TCJA-centric hearings are also in the works, specifically on the section 199A pass-through business income tax deduction, and on the tax rules governing charitable giving. International tax rules are also on the committee’s radar scope. And, estate tax rules may also get a hearing in the upcoming months. And if that’s not enough, consider that with the federal deficit exploding, the need for offsetting new tax revenue is likely in the foreseeable future.

The committee’s chairman, Rep. Richard Neal (D-MA), has repeatedly stated that the issue of retirement savings is among his top priorities. Currently, the committee is planning to move a “big, bold” retirement savings bill by the end of May (that timing could slip). The bill—which will likely include most of the provisions in the Retirement Enhancement Savings Act (RESA) and the GOP’s Family Savings Act, if they haven’t already passed by then—will likely include automatic participation/escalation 401(k) and/or IRA proposals as well as a plethora of other provisions aimed at further incentivizing employer-sponsored retirement savings plans.

While the revenue implications of a “big, bold” retirement savings plan are subject to change, as of this moment the committee plans to offer a revenue-neutral retirement savings bill. That means there will be offsets included in it. No decisions have been made about what those offsets would be, but the committee is looking at revenue-raising proposals in the areas of stretch IRAs (the principal offset for RESA), pension smoothing, “rothification” (they say there will not be a full-blown rothification proposal, but there could be some Roth-like proposals), and others.

Rothification is the buzz word used to describe proposals that would make contributions to retirement savings after-tax, with tax-free withdrawals post-retirement. The stretch IRA proposal is still under construction, but it appears that the tax writers will propose a rule that would require most heirs (exceptions include spouses, minor children, and disabled and same-age (within 10 years) beneficiaries) to take distributions of (and pay tax on) inherited 401(k) and IRA amounts within 10 years of inheriting.

On top of retirement savings, infrastructure financing, and TCJA modification bills, there is likely to be Ways & Means Committee action on health taxes. Whether these bills come in the form of Medicare-for-All in any of its multiple variations or instead take the form of modifications to the Affordable Care Act (ACA), health tax legislation seems quite likely this year.

Prospects: The May timeframe for a retirement savings bill is in the current plans, but other tax agenda items' timing is more uncertain. To some degree a revenue bill will depend on whether the politics of an infrastructure package come together, on what (if any) revenue proposals President Trump includes in his FY 2020 budget, and on the development of the health reform issues. And, of course, any other bill that requires offsets (now there is a House rule that requires tax cuts to be “paid for” at the time of enactment—the old pay-go rule) will trigger a Ways & Means Committee tax bill.

So, at the moment Congress is in the preparatory phase of tax legislation, with no immediate action on the horizon. But all signs point to a busy time for tax writers—and those who have substantial interest in many potential tax proposals in the months to come.

DOL Proposes New Overtime Rules for White-Collar Workers

On March 8, the Department of Labor's (DOL's) Wage and Hour Division (WHD) announced a Notice of Proposed Rulemaking (NPRM) to update the rules governing overtime pay requirements for white-collar workers. The proposed regulation would exempt white-collar workers from the Fair Labor Standards Act's (FLSA's) overtime pay requirements if (1) the worker earns at least \$35,308/year (the “salary threshold”), and (2) the worker's job duties include substantial autonomy and authority over the tasks the worker performs (the “duties test”).



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The proposed new rules do not suggest changes to the exemption’s “duties test.”

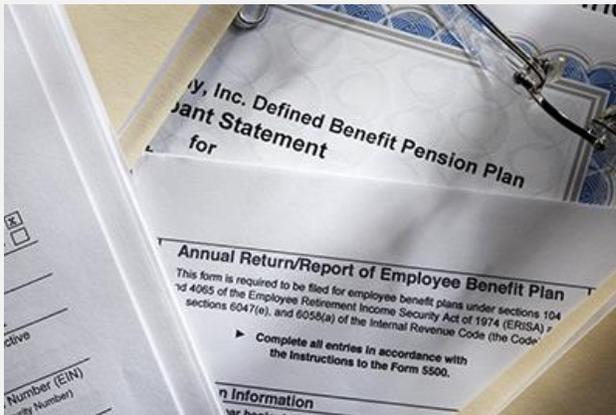
The proposed regulation also does include automatic inflation adjustments to the salary threshold, although DOL specifically requests comments on the best way to automatically adjust the salary threshold. The agency is currently thinking of automatic adjustments to the salary threshold every four years.

The proposed regulation is subject to a 60-day comment period, which officially opens when the proposed regulation is published in the *Federal Register* (currently that is expected on or around March 12, 2019).

This NPRM comes after a federal district court in Texas enjoined (blocked) an Obama Administration rule that upped the salary threshold from \$22,660 to \$47,476. The Obama regulation also indexed the salary threshold for inflation. The court said the increase was too much too fast.

Prospects: The court challenge to this new regulation will likely continue once the regulation is finalized. Supporters of the Obama-era rule that set the exempt worker salary level at \$47,476 say they will challenge whether DOL is acting within the authority of the Administrative Procedure Act (APA) in changing the Obama-era rule before the court challenge finishes working through the judicial process. However, it appears from comments to date, that most employers can live with the \$35,308 salary level called for in this new proposed rule. Whether that turns out to be true will come clear as comments on the proposed reg come in over the next couple of months.

IRS Notice Changes Prospects for Lump-Sum Payment Options for DB Plan Annuitants



On March 6, the Treasury Department and the Internal Revenue Service (IRS) issued Notice 2019-18 stating that the agencies “no longer intend to amend the required minimum distribution regulation to address the practice of offering retirees and beneficiaries who are currently receiving annuity payments under a defined benefit (DB) plan a temporary option to elect a lump-sum payment in lieu of future annuity payments.”

In the Notice, the IRS/Treasury explains that some DB plan sponsors plans have provided a limited period during which certain retirees who are currently receiving lifetime annuity payments from those plans may elect to convert their annuities into lump sums that are payable immediately. These arrangements—usually called lump-sum windows—gave rise to questions about whether they resulted in an increase in benefits subject to the minimum distribution rules.

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Under prior guidance (notice 2015-49), the agencies announced their intention to address this issue in proposed amendments to the required minimum distribution regulations in order to make clear that converting from lifetime annuity payments to a lump sum during a lump-sum window would not constitute an increase in benefits subject to the minimum distribution rules.

Notice 2019-18 retracts the agencies' 2015 intention to propose regulations on this issue. But the agencies said they will continue to study the issue of retiree lump-sum windows. "Until further guidance is issued," the Notice states, "the IRS will not assert that a plan amendment providing for a retiree lump-sum window program causes the plan to violate § 401(a)(9), but will continue to evaluate whether the plan, as amended, satisfies the requirements of §§ 401(a)(4), 411, 415, 417, 436, and other sections of the Code."

Prospects: This is important information for advisors who deal with DB plans that are paying lifetime annuity payments and offering lump-sum windows.

NAIFA Invites Their Industry Partners to the Congressional Conference



NAIFA's Congressional Conference will bring together hundreds of agents and advisors to Washington, DC to learn about the legislative issues that matter to people in our industry and how these issues impact our business and our clients' financial well-being. As a Conference participant, you will be educating your Members of Congress on issues of concern and helping to shape national public policy. Your attendance is particularly critical as we attempt to expand the diversity of our group to adequately match the diverse demographics represented in Congress. The 116th Congress is the most diverse Congress in the nation's history. Not only does the 116th Congress have the largest number of women ever serving in Congress (127), this Congress has the largest number of African Americans (55), Hispanic/Latin Americans (44), Asian/Pacific Islanders (15), and Native Americans (4) in history.

NAIFA asks you to lead the way for your industry and attend the 2019 Congressional Conference. Our goal is to ensure that laws and regulations enhance, not restrict, the ability of middle market families to have access to the products and services our industry offers. NAIFA will provide Conference participants with issues education and advocacy training so we can effectively convey the legislative message.

For more information, go to <https://www.naifa.org/events/congressional-conference> and contact Maggie Buneo – Program Manager, Government Relations, at mbuneo@naifa.org to register.

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