Finance Committee holds nomination hearing for tax-policy post at Treasury, TCJA benefits small businesses

The Senate Finance Committee held a nomination hearing this week to consider Kenneth Kies to be an Assistant Secretary of the Treasury. If confirmed by the full Senate, he will play a key role facilitating the extension of expiring tax cuts in the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97), and in developing additional tax legislation affecting individuals and businesses. (The Finance Committee also considered William Kimmitt's nomination for Under Secretary of Commerce for International Trade during this hearing.)
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf

A plethora of issues

While Kies answered questions on various tax issues he would likely handle if confirmed by the Senate, he also stressed the importance of extending the 2017 TCJA provisions beyond 2025.

"TCJA has proven to be a very successful pro-growth piece of legislation, particularly if you look at the revenue that's been generated from 2017 to 2024," Kies said.

"Making it [2017 TCJA] permanent will lock-in the benefits of those provisions," he added.

Corporate tax rate: Kies praised the TCJA's reduction of the corporate tax rate to 21% and stated that this change "made the United States an attractive place to do business."

The TCJA permanently reduced the corporate tax rate to 21 percent (from 35 percent under prior law), however, President Trump campaigned to reduce that rate to 15 percent, but only for domestic manufacturing (a term that has not been further defined).

Foreign-derived intangible income: In response to Sen. Thom Tillis' question as to whether the foreign-derived intangible income (FDII) provision is worth maintaining, Kies said – "Absolutely." He stated that the FDII and 21% corporate tax rate provisions were introduced to encourage companies to remain in the United States.

FDII is essentially the portion of a domestic corporation's intangible income that is derived from serving foreign markets. The TCJA taxes FDII at a reduced effective tax rate of 13.125 percent.

Pillar Two: Republican Sen. Marsha Blackburn of Tennessee maintained that the additional taxes that Pillar Two imposes on US businesses are "not fair" and said that "it is something the prior administration got us in to and we need this administration to get us out of."

President Trump released a memorandum to the Treasury Secretary and the US Trade Representative regarding the OECD "Global Tax Deal," which is intended to include the Pillar One and Pillar Two multilateral projects drafted by the OECD and currently being implemented in EU jurisdictions and elsewhere. The memorandum instructed the Treasury Secretary and the permanent representative of the United States to the

OECD to notify the OECD that any commitments made by the Biden administration have no “force or effect” within the United States absent an act by the Congress adopting the relevant provisions of the deal. (For prior coverage, see *Tax News & Views*, Vol. 26, No. 3, Jan. 21, 2025.)
URL: https://www.whitehouse.gov/presidential-actions/2025/01/the-organization-for-economic-co-operation-and-development-oecd-global-tax-deal-global-tax-deal/
URL: https://dhub.deloitte.com/Newsletters/Tax/2025/TNV/250121_1.html

Pillar Two is a global framework which imposes on a business a minimum tax of 15 percent in a country in which it operates. The US has not taken any action to come into compliance with Pillar Two (or Pillar One) of the OECD framework, a two-part international agreement signed on to by the Biden administration in 2021 with 140 other countries.

Standard deduction and the child tax credit: Kies explained that the increased standard deduction and child tax credit under the TCJA have benefited American families. Though when Sen. Tina Smith (D-Minn.) asked about adding a provision to a new tax bill to help families pay for childcare, Kies reiterated that the standard deduction would provide financial help, but there is no new provision that the President has proposed to help families cover childcare expenses. He also mentioned that not extending the TCJA tax provisions would make it harder for families to meet their financial needs.

The child tax credit is currently $2,000 per child, however, at the end of 2025, it is set to revert to its pre-TCJA amount of $1,000 per child.

For the 2025 tax year, the standard deduction is $15,000 for single filers and $30,000 for joint filers, however, if the deduction is not extended at the end of this year, then starting in 2026, it would revert to pre-TCJA levels which is roughly half of the current amounts.

Small businesses: Sen. Blackburn maintained that 75 percent of businesses in Tennessee are small businesses, and that most of them are structured as a passthrough entity. She asked Kies what the Treasury Department could do to reduce the burden on these businesses.

Kies referred to small businesses as “the backbone of the federal tax system.” He said that we need to make dealing with the tax system as “simple” as possible so that taxpayers can understand it. He also said that extending the 2017 TCJA’s section199A passthrough business deduction beyond 2025 is “absolutely critical” for small businesses.

The section 199A provision was created by the TCJA and provides a 20 percent deduction for most passthrough business income, though there are exceptions that deny the deduction to certain designated businesses, which includes most professional services (medicine, law, etc.). If there is no action, then the deduction would be repealed and passthrough income would be taxed at a taxpayer’s individual rate.

Form 1099-K: GOP Sen. Bill Cassidy of Louisiana argued that the current threshold for reporting specific transactions to the IRS on Form 1099-K is impractical and should be raised.

Kies said that the threshold change has been "difficult for people to handle," and that it needs to be "rethought."

Certain taxpayers must report payments on Form 1099-K when the total amount received for goods or services through a platform exceeds $5,000 in 2024, $2,500 in 2025, and $600 in 2026 and beyond. Despite the phased reporting thresholds, a taxpayer may still receive a Form 1099-K even if total payments are below these thresholds. Regardless of the amount reported, all income from selling goods or services must be included on the tax return.

For tax year 2023, if a taxpayer's transactions totaled $20,000 or more and involved at least 200 transactions through an online marketplace, they would have received a Form 1099-K.

Current policy baseline: Several senators, including Senate Finance Committee Chairman Mike Crapo (R-Idaho) and Sen. Peter Welch (D-Vt.), asked Kies about using the current policy baseline as a scoring mechanism.

"A current policy baseline is a path to achieving permanency in the tax code," Kies said in response to a question from Sen. Crapo, and added that "permanency is an important outcome for both businesses and individuals."

Kies also noted that the current policy baseline helps members evaluate legislation, but there is also a current law baseline to inform decisions. Ultimately, members of Congress will have to decide going forward.

That said, in response to a question from Sen. Peter Welch (D-Vt.), Kies referred to a letter from Tom Barthold, the chief of staff of the Joint Committee on Taxation (JCT), who indicated that the JCT's default approach to providing members of Congress with revenue estimates is to measure these effects relative to the present law baseline, though Barthold acknowledged that members have in the past asked for the JCT to measure the budgetary effect of various proposals under different baselines. (text of February 19 letter from the five senators to Barthold)
URL: https://www.warren.senate.gov/imo/media/doc/jct_response_to_warren.pdf
URL: https://www.warren.senate.gov/imo/media/doc/warren_letter_re_current_policy_baseline.pdf

Conflict of interest: Sen. Elizabeth (D-Mass.) centered her questioning on Kies' potential conflicts of interest with clients and former clients who might be impacted by the issues he would handle at the Treasury Department if confirmed. She asked whether he would commit to recusing himself from any matters involving the financial interests of clients and former clients during his tenure with the Trump administration.

Kies assured her that he will follow the terms of the ethics letter written by career experts (likely referring to the ethics portion of the required paperwork for nominees during the confirmation process). He also mentioned a news article that described him as someone who takes ethics seriously.

Sen. Warren wrote to Kies on April 9 and requested that he agree to (1) sell his investments in companies that lobby or interact with Treasury tax officials; (2) for four years, avoid any matters involving former clients and

employers or that affect their financial interests; and (3) for at least four years after leaving office, do not work in the industries he regulated at the Treasury Department or become a lobbyist.
URL: https://www.warren.senate.gov/imo/media/doc/letter_to_ken_kies_reethicscommitments.pdf

Tariffs: Tariffs were also discussed throughout the hearing and Sen. Maggie Hassan (D-N.H.) referred to President Trump's tariffs as a tax increase on the American family in the form of a national sales tax. She asked nominee-Kimmitt whether tariffs are taxes. Kimmitt said that her question "oversimplifies" the nature of a tariff, and they have multiple uses, including leveling the playing field against unfair trade practices.

As of press time, the Committee had not announced a date to consider whether to recommend the full Senate confirm either of the two nominees.

Treasury Department announces more key senior positions

The Treasury Department announced several additional key senior positions, including Rebecca Oakes Burch as Deputy Assistant Secretary for International Trade, where she will advise and assist on international economic issues. She began her career as a tax attorney with the IRS's Office of Chief Counsel, and most recently served as a managing director for a financial services firm.
URL: https://home.treasury.gov/news/press-releases/sb0072

Kevin Salinger has been appointed as Deputy Assistant Secretary for Tax Policy, and Derek Theurer will serve as the Deputy Under Secretary of the Treasury for Legislative Affairs. Upon confirmation, Theurer will be designated as Assistant Secretary for Legislative Affairs.

TCJA benefits small businesses

Across the Capitol, a joint hearing was held on April 8 in which GOP members of the House Small Business Committee and Senate Small Business and Entrepreneurship Committee highlighted how the TCJA has facilitated growth and reinvestment for small businesses by utilizing key tax provisions.

In contrast, Democratic committee members primarily emphasized their belief that the TCJA has disproportionately benefited the wealthiest taxpayers at the expense of others, noted the impending cuts to Medicaid, emphasized the negative economic impact of President Trump's announced tariffs, and maintained that the section 199A passthrough deduction is inadequately tailored to benefit only small businesses.

Key topics of interest for GOP committee members during the hearing included the section 199A passthrough deduction, bonus depreciation, and the estate tax exemption.

Section 199A passthrough deduction: Along party lines, committee members disagreed over the merits of the section 199A deduction for pass-through entities, with Republicans citing it as a boost to small business job creation and Democrats complaining that the benefit is enjoyed by more than just small businesses. See separate story in this edition for additional background on Section 199A.

“This critical provision, section 199A, levels the playing field for small businesses and fuels their growth,” said House Small Business Committee Chairman Roger Williams (R-Texas).

Republican Rep. Pete Staube of Minnesota echoed Williams’ statement and declared that section 199A “leveled the playing field for small firms competing against large corporations.” He also added that the tax provision has helped “thousands” of Minnesota passthrough businesses.

Senate Small Business and Entrepreneurship Committee Ranking Member Edward Markey (D-Mass.), on the other hand, maintained that he would support extending section 199A if it was tailored specifically for small businesses. “We need a small business policy that benefits true small businesses,” he added.

Bonus depreciation: GOP committee members, including Rep. Beth Van Duyne (R- Texas) who is also a member of the House Ways and Means Committee, advocated for a permanent depreciation rate of 100 percent (*i.e.*, bonus depreciation).

Van Duyne referred to the Accelerate Long-term Investment Growth Now Act or the ALIGN Act (H.R. 574), which she cosponsored. The Act would amend the tax code to permanently allow a tax deduction at the time an investment in qualified property is made for purposes of section 168(k).
URL: https://www.congress.gov/bill/119th-congress/house-bill/574/text

Under the TCJA, the 100 percent rate for bonus depreciation was phased down in increments of 20 percentage points per year beginning in 2023. (A 40 percent rate is in effect for 2025, but will be reduced to 20 percent for 2026, and zero for property placed in service after December 31, 2026.)

Estate tax exemption: The estate tax exemption was also a topic of discussion, specifically as it related to the ability to pass a family farm or other business to the next generation upon someone’s death. Several GOP committee members spoke on the subject, including Senate Small Business and Entrepreneurship Committee Chair Joni Ernst (R-Iowa) and Rep. Troy Downing (R-Mont.), who were in favor of maintaining the TCJA exemption tax parameters.

“The TCJA reduced the death tax, giving families the ability to keep their farms and businesses after a loved one’s passing. This change was particularly important in my state, preventing families from being forced to sell off farms or businesses that have been in [their families] for generations,” said Ernst.

“The bottom line is that America’s small businesses need the TCJA along with the certainty it provides,” she added.

Sen. Ernst is a cosponsor of the Death Tax Repeal Act (S.587), which was introduced by Senate Majority Leader John Thune (R-S.D.) and would repeal the estate and generation-skipping taxes. In the House, Ways and Means Committee member Randy Feenstra (R-Iowa) introduced a companion version of the bill (H.R. 1301).
URL: https://www.congress.gov/bill/119th-congress/senate-bill/587/text
URL: https://www.congress.gov/bill/119th-congress/house-bill/1301/text

Republican Rep. Troy Downing emphasized the importance of the estate tax exemption in his comments. He highlighted that many farmers and ranchers in his district are "land rich but cash poor," and stated that the increase in this exemption under the TCJA has been vital for these small farmers and ranchers.

Under current law, the estate tax exemption in 2025 is $13.99 million per taxpayer, up from $13.61 million in 2024 after being adjusted to reflect inflation, however, if the provision is not extended beyond the end of this year, that amount would decrease to $5 million indexed for inflation.

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