SCWA Legislative & Regulatory Update

February 12, 2025

Budget Reconciliation

The first step in the budget reconciliation process requires both chambers of Congress to pass a budget resolution. Speaker Mike Johnson (R-LA) initially wanted the House Budget Committee to markup a budget resolution last week. But leadership and key factions of the Republican party have not yet agreed to top-line numbers. Johnson maintains that could happen as soon as this week. Once it does, the arguably more difficult work begins. The House Budget Committee must report out the measure (Republicans can afford to lose the support of just two of their members on the Committee), the full House must pass it (depending on when the resolution is brought to the floor, Republicans might need unanimous support from their side of the aisle to do that), and the Senate must pass an identical budget resolution.

President Trump met with House Republicans last Thursday to outline his tax priorities for the eventual budget reconciliation package. His list included prior demands like permanently extending all tax cuts set to expire per the terms of the 2017 Tax Cuts and Jobs Act (TCJA); eliminating taxes on tip income, Social Security payments, and overtime pay; and introducing new tax cuts for domestic manufacturing income. But it also included new proposals to end the carried interest tax break used by private equity and hedge fund managers, end "special tax breaks for billionaire sports team owners," and expand the state and local tax deduction. The scores attached to these proposals will depend on the details, but the cost of the tax cuts the President wants enacted should exceed the revenue to be gained from the tax increases he has proposed by somewhere between $5 to $11 trillion.

Meanwhile, the Senate has decided to move its own budget resolution. Per a draft released last Friday, this measure would authorize more than $340 billion in new funding for border security, defense and energy programs, to be fully offset by spending cuts, leaving tax issues for a second reconciliation package later in the year. The budget resolution includes instructions for the Senate Finance Committee, but not for the House Ways and Means Committee, leading some to believe that the offsets will come primarily from cuts to Medicaid. The Senate Budget Committee will markup the resolution on Wednesday and Thursday. Under the terms of the resolution, instructed committees would have until March 7 to draft their sections of the reconciliation package.

An Important Scoring Debate: The Joint Committee on Taxation (JCT) produces official estimates of the revenue gain or loss for tax bills. The Congressional Budget Office (CBO) estimates the impact of spending bills. Both scores are particularly important in the context of a budget reconciliation bill because of the strict budgetary constraints required to successfully utilize that special legislative procedure.

The starting point to develop a score involves determination of the baseline – the budgetary and economic projections against which changes are measured. Typically, the estimate of how much any change to tax or spending law will cost is based on comparison to a "current law."

A significant number of tax provisions included in the TCJA will expire at the end of this year. Pursuant to traditional scoring methodologies, extending those provisions represents a change from current law that will score as a cost. Based on this approach, the CBO has estimated that extension of all TCJA expiring provisions will cost $4.6 trillion over ten years. JCT estimates that extending the expiring provisions would cost $4 trillion over the same period.

Many Republicans believe that CBO and JCT will over-estimate the cost of their reconciliation package because they do not adequately account for the dynamic effects of tax cuts and spending changes, meaning their impact on macro-economic growth. Those critics could end up being right – development of a baseline is an art, not a science, and CBO and JCT both have erred in their projections before.

In response to such concerns, the administration, GOP leadership, and the chairs of both the House and Senate tax committees argue that the cost of extending the TCJA's expiring tax provisions should be based on "current policy" rather than "current law," based on the claim that it is more reasonable to assume that those individual, estate, and passthrough tax cuts would always be continued and not allowed to expire. Under that approach, extension of the TCJA's expiring provisions would have no or only a de minimis budgetary impact, and the tax committees would have a lot more room to implement a slew of other changes to the Internal Revenue Code.

Congress does have the ability to change the scoring rules. But some Republican budget hawks view proposals to move to a current policy baseline as a budget gimmick, and so the GOP might not be able to muster required support for the change. Beyond that, if Republicans use a current policy baseline to show that extending expiring TCJA provisions costs nothing, Senate Democrats could raise an objection to argue that such language must be stricken from the reconciliation bill under the Byrd Rule. That rule prohibits the inclusion of any provision in a reconciliation bill if it makes no change to revenues or has a merely incidental impact on revenue. If the Senate Parliamentarian were to sustain such objection, it would take 60-votes to overcome the ruling, and Republicans hold just 53 seats in that chamber. Finally, Republicans surely will consider whether setting such precedent could come back to bite them at some future date when Democrats control the White House and both chambers of Congress.

One other scoring approach also available to Republicans would be to authorize a maximum amount of deficit spending in the budget resolution, and to calculate that number so that it takes into account estimates of the budgetary impact of law changes implemented outside of the reconciliation process, for example revenue raised by tariffs implemented by Executive Order and economic growth resulting from deregulation. It is not clear, however, that those provisions would provide enough revenue to offset the desired level of tax cuts.

The Congressional Week Ahead

House: The House returns today, with votes anticipated this afternoon through Thursday. The schedule includes two bills to be considered under a rule, requiring a simple majority vote for passage: the Midnight Rules Relief Act (H.R. 77), which would allow multiple regulations from the final year of a president's term to be canceled by a single joint resolution of disapproval, and a bill (H.R. 35) that would impose new criminal penalties on drivers who evade U.S. Border Patrol agents or other law enforcement officers. The schedule also includes six bills out of the Financial Services committee to be considered under suspension of the rules, requiring two-thirds majority support for passage. **The suspension list includes a bill (H.R. 736) that would delay the deadline for businesses to report beneficial ownership information to FinCEN to January 2026**, two bills that address Chinese currency manipulation, a bill to reduce the required number of board meetings for certain federal credit unions, and two measures relating to veterans' housing programs.

Senate: The chamber is set to vote this week on the nomination of Tulsi Gabbard to be the Director of National Intelligence, Robert Kennedy for Secretary of Health and Human Services, Howard Lutnick for Secretary of Commerce, Brooke Rollins for Secretary of Agriculture, and Kelly Loeffler to head the Small Business Administration.

SCWA Signs CTA Joint Trades Letter

SCWA along with 120 trade associations called on the Treasury Department to offer Main Street some relief and certainty by delaying the CTA through at least the end of this year. The letter reads:

Dear Secretary Bessent:

SCWA and the undersigned organizations, representing millions of Main Street businesses operating in every industry and community in America, applaud the Department for its swift action in pausing the Corporate Transparency Act's (CTA) reporting requirements while a nationwide court order remains in place, and respectfully ask that you strengthen this action by administratively extending the CTA filing deadline until January 1, 2026.

The CTA was designed to help law enforcement prevent money laundering by requiring shell companies to report and regularly update information regarding their beneficial owners (BOI) to Treasury. The law's definition of a shell company, however, is ridiculously broad. By FinCEN's own estimates, it initially covers 32 million legal entities with 20 or fewer employees or $5 million or less in revenues – in other words, nearly every small business in the United States.

Despite its unprecedented scope, the CTA will be of little practical use to law enforcement, as criminals are unlikely to self-report their information to FinCEN. The brunt of its reporting burdens and excessive penalties will be shouldered by law-abiding Main Street businesses instead.

Lack of awareness of the CTA's reporting requirements has not helped. Despite massive public awareness campaigns by the groups represented here, as of December 1, 2024 – just one month before a year-end deadline – FinCEN had received less than 30 percent of the required filings. Had the courts not intervened, tens of millions of business owners would have been out of compliance and at risk of felony prosecutions.

The myriad of legal challenges and court rulings has added to the confusion. A nationwide injunction issued against the CTA in December was subsequently overturned, reimplemented, and overturned again, all in a matter of weeks. An Alabama court ruling that found the CTA unconstitutional is still pending appeal in the Fifth Circuit, while at least ten other legal challenges are still waiting to be heard.

Still another nationwide order to pause mandatory filing– issued by the District Court for the Eastern District of Texas in the case of *Smith v Treasury* – remains in place. While we appreciate FinCEN's decision to respect that order and pause the collection of BOI, the relief provided through that regulatory action is contingent upon the order remaining in place.

Small businesses find themselves in the position where they are currently under no obligation to file, but a single court ruling could force them to comply with this burdensome and costly statute in short order.

Given the volatile legal landscape and the vast number of businesses targeted by the CTA's unprecedented reporting mandates, we urge the Administration to issue new guidance to delay filing until the end of the year and ensure the courts have time to make a final determination regarding the CTA's constitutionality.

The undersigned organizations are grateful for your efforts and strongly support the actions outlined above.

Sincerely,

Southwest Car Wash Association and other trade associations

Chuck Space, SCWA Executive Director
Southwest Car Wash Association