

Lawmakers Continue To Make Corrections To Fed. Tax Law

By **Joshua Rosenberg**

Law360, Washington (February 13, 2018, 6:17 PM EST) -- The federal budget agreement signed by President Donald Trump made tweaks to provisions in the federal tax law passed by the U.S. Congress in December, and more corrections can be expected in a process that could take years.

House and Senate tax writers have acknowledged the need for fixes to the Tax Cuts and Jobs Act, P.L. 115-97, but have not said what provisions would be altered or when they would be done. Senate Finance Committee Chairman Orrin G. Hatch, when asked about how he would change the law Tuesday, said there was much he wished he could have done.

"I intend to make some changes before I leave the Senate," Hatch, who will not run for reelection this year, said during an event at the Brookings Institution in Washington.

Members of the House Ways and Means Committee are working with their Senate counterparts as well as the Trump administration to monitor how the tax law is working and to continue to address corrections, a Ways and Means spokesperson told Law360.

Among the areas identified as needing revision by Ways and Means Chairman Kevin Brady, R-Texas, is the farm cooperative provision that provides tax breaks for food suppliers who sell to cooperatives instead of private buyers, the spokesperson said.

Another provision that might need to be addressed is the net operating loss effective date, which no longer allows tax filers to spread out financial losses over past years. Under the former provision, taxpayers could do so for two previous years.

The Bipartisan Budget Act of 2018, signed Friday, extended funding for the federal government and amended some provisions enacted in the TCJA. For example, it specified that a tax on private college endowments would be limited to institutions with at least 500 "tuition paying" students.

The act also inserted a "rule of construction" for a section of the TCJA that dealt with federal

excise taxes for breweries, wineries and distilled spirits producers, clarifying that the changes would not preempt state and local laws.

The Ways and Means spokesperson said it was difficult to say whether future revisions to the TCJA will be included in other bills, such as what happened with the budget act, or whether tax writers will draft a comprehensive technical corrections bill.

Democrats have said the mere fact that some lawmakers are already considering technical corrections to the TCJA proves the bill was flawed.

“Kevin Brady said he wouldn’t be in the technical corrections business anymore. He said the tax law would take care of that,” Finance Committee ranking member Ron Wyden, D-Ore., told Law360 Tuesday. “His chickens are coming home to roost.”

Sen. John N. Kennedy, R-La., said addressing technical corrections through legislation is natural after landmark legislation gets passed.

“There’s going to have to be corrective legislation as we learn more about the impact and the consequences from the law,” Kennedy said. “It’s true of any major legislation.”

Sen. Tim Kaine, D-Va., said he expected that further corrections to the TCJA were likely.

“The fact that it was done at all means if they’re finding things, they’ll probably continue to be able to find other things,” Kaine told Law360.

For tax professionals, there is continuing uncertainty about which elements might be changed by lawmakers, and when those changes might occur, given the current political realities in Washington.

Whether there will be some kind of comprehensive fix to the tax cut legislation “is a frequent question for the practitioner community,” said Warren S. Payne, a former Ways and Means policy director and now a senior adviser at Mayer Brown LLP. “More likely than not, we’ll have to wait a while for any legislation, given how partisan the consideration of the original bill became.”

--Editing by Neil Cohen.