Miller & Chevalier

42nd Annual TEI-SJSU High Tech Tax Institute Washington Update

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November 2, 2026

Legislative Outlook and Enforcement Policy

- Intersection of legislative policy and tax enforcement
- Two-month, two-year and long-term policy perspectives
- Broader fiscal issues driving the policy and enforcement agendas
- Fiscal options: borrowing, raising taxes, cutting spending and enforcement

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LEGISLATIVE OUTLOOK

Modest Legislative Accomplishments in 2026

- Consolidated Appropriations Act, 2026 (February) – FY2026 government funding (except DHS, ICE and CBP)
- Secure America Act (“Reconciliation 2.0”) (June) - $70 billion in funding for DHS, ICE and CBP through FY2029
- 21st Century ROAD to Housing Act (July) – bipartisan housing bill; became law automatically after President Trump refused to sign it
- Continuing Appropriations and Extensions Act, 2027 (September) – FY2027 government funding through December 11th
- NO SIGNIFICANT TAX LEGISLATION TO DATE

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Significant Congressional "To Do" List for "Lame Duck"

- The House and Senate will return for roughly 5 weeks in November / December and face a significant agenda of "must pass" legislation and other priorities
  - Reconciliation 3.0
  - FY2027 Government Funding (continuing resolution expires December 11th)
  - SAVE America Act
  - Supplemental Defense Appropriations
  - Foreign Intelligence Surveillance Act
  - National Defense Authorization Act

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Significant Congressional "To Do" List for "Lame Duck"

- Highway Bill
- Farm Bill
- Crypto Market Structure Bill
- College Sports Reform Bill
- Energy Permitting Reform
- AI/Data Center-Related Legislation
- Debt Limit Increase
- Senate confirmation of Trump administration appointees (including the IRS Chief Counsel and one Tax Court judge)

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Reconciliation 3.0

- House-passed budget resolution
  - $95B for supplemental defense appropriations / aid to farmers / SAVE Act state grant program
  - No revenue offsets - no “fraud, waste and abuse” spending cuts or tax increases
- Uncertain future in the Senate
  - Senate Budget Committee Chairman proposed a budget resolution with $150B of government spending and no revenue offsets
  - Some discussion of increased supplemental defense appropriations or inclusion of debt limit extension - which may increase pressure on the need for revenue offsets
  - Some discussion of “Reconciliation 4.0” to include additional items, including “fraud, waste and abuse” spending cuts and tax provisions

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Potential for Year-End Bipartisan Tax Bill

- Highly dependent on a variety of factors
  - Mid-term election fallout
  - Ability to agree on revenue offsets
  - Whether Democrats insist on inclusion of ACA enhanced premium tax credit extension
  - Level of Trump engagement / support
  - Whether a partisan reconciliation bill is still in play
- OBBBA extended most of the expiring TCJA provisions (and PATH Act previously made the R&D credit permanent)
- FY2027 government spending bill (likely a continuing resolution) could be the legislative vehicle

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Potential Tax Relief in Year-End Bipartisan Tax Bill

- Expired extenders (WOTC, Section 181, etc.)
- Provisions expiring at the end of 2026 (CHIPS ITC)
- Tax administration
- Digital asset taxation
- Retirement savings
- Domestic film/TV production credit
- U.S.-Taiwan tax relief
- Technical corrections
- Member priorities/"legacy" items
- Fix for OBBBA limit on gambling loss deductions

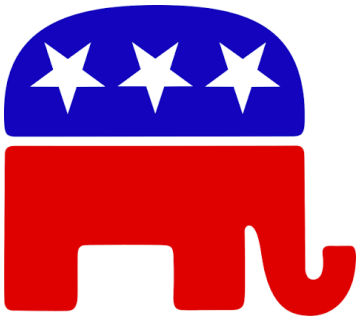
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2026 Midterm Election Update

Republican Outlook

- Republicans face significant headwinds given President's low approval rating, state of the economy, fuel prices, Iran war, tariff policy, etc.

- Republicans have structural advantages that may limit Democratic gains in the midterm election
  - Huge funding advantage
  - Advantage from unprecedented mid-decade redistricting
  - Uncertain success of Democratic Socialists in general elections
  - Most Senate GOP seats up for election are in reliably "red" states
  - Retirements of some Senate Democrats created pick up opportunities for Republicans



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2026 Midterm Election Update

Democrat Outlook

- Sitting President's party (i.e., GOP) has historically been more likely to lose seats in the midterm election
- Democrats are on offense and taking advantage of new opportunities to pick up seats in the House and Senate
  - Republicans are defending traditionally "red" Senate seats in multiple states
  - Senate seats in farm states (Iowa, Kansas) have become more competitive



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2026 Midterm Election Update - House

- Current House: 220 Republicans / 215 Democrats (including vacancies)
- Democrats need a net pick up of only three seats to take control (i.e., defend all current seats and flip three red seats)
- Retirements, members running for other office, primary losses at historic levels
  - 41 Republicans / 32 Democrats



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2026 Midterm Election Update - House

- Polling suggests that the most likely outcome is Democrats picking up 5 to 15 seats, resulting in a slim majority of 220 to 230 seats
  - 218 seats needed for a majority
- Republicans will pick up seats due to redistricting, but likely not enough to maintain GOP control of the House

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2026 Midterm Election Update - Senate

- Current Senate: 53 Republicans / 47 Democrats
- Dems need a four-seat net pick up to take control
- The map favors GOP, but still playing defense
  - 22 Republicans / 13 Democrats seats up
- Retirements, running for other office, primary losses
  - 10 Republicans / 5 Democrats

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2026 Midterm Election Update - Senate

- Seats in play
  - Republicans: Collins (ME), Tillis (NC – ret.), Sullivan (AK), Husted (OH), Cornyn (TX), Ernst (IA – ret.), Marshall (KS)
  - Democrats: Ossoff (GA), Peters (MI – ret.), Shaheen (NH – ret.)
- Seats that could become in play
  - Republicans: Ricketts (NE), Graham (SC)
  - Democrats: Smith (MN – ret.)
- North Carolina and Georgia likely to be Democratic-won seats (one pick up, one hold)

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2026 Midterm Election Results Will Shape Lame Duck

If Democrats **gain control** of the House or Senate

The Administration is likely to pressure Congressional Republicans to pursue **Reconciliation 3.0** to secure defense spending, deficit reduction, and a potential debt limit increase

**Congressional Republicans likely to face significant attendance issues*

If Congressional Republicans pursue **Reconciliation 3.0**, it will be politically challenging for Democrats to engage on a **year-end bipartisan tax bill**

Democrats' willingness to engage on a **year-end bipartisan bill** will likely be dictated by
(1) whether they **gain control** of the House and/or Senate and
(2) whether they have a functioning majority (number of seats, role of Democratic Socialists, etc.)

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2026 Midterm Election Results Will Shape Lame Duck

- Other Factors
  - How Democrats exercise their leverage if they win control of the House and/or Senate
  - GOP leadership elections if the House flips
  - Attendance issues

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2026 Midterm Election Results Will Shape The Midterms

- If Democrats gain control of the House or Senate, the Administration is likely to pressure Congressional Republicans to pursue Reconciliation 3.0 to secure defense spending, deficit reduction and a potential debt limit increase
  - Congressional Republicans likely to face significant attendance issues
- If Congressional Republicans pursue Reconciliation 3.0, it will be politically challenging for Democrats to rationalize engaging on a year-end bipartisan tax bill
- Democrats' willingness to engage on a year-end bipartisan bill likely will be dictated by whether they gain control of the House and/or Senate and whether they have a functioning majority (number of seats, role of Democratic Socialists, etc.)

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2027 Changes to Tax-Writing Committees

- Significant changes to the leadership and membership of the tax-writing committees regardless of election results given retirements, members seeking other office and primary losses
  - House Committee on Ways and Means (5 Republicans / 5 Democrats)
    - Feenstra (R-IA), Schweikert (R-AZ), Arrington (R-TX), Buchanan (R-FL), Hern (R-OK), Evans (D-PA), Davis (D-IL), Doggett (D-TX), Larson (D-CT), Plaskett (D-VI) (non-voting)
  - Senate Committee on Finance (5 Republicans / 1 Democrat)
    - Tillis (R-NC), Blackburn (R-TN), Daines (R-MT), Cassidy (R-LA), Cornyn (R-TX), Smith (D-MN)
    - Members up for re-election – Marshall (R-KS), Lujan (D-NM), Warner (D-VA)
- If Democrats take control of the House, there could be approximately 12 new Democratic members of the Committee on Ways and Means; junior Republican members of the Committee could lose their seats

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2027 Changes to Tax-Writing Committees

- Members already positioning themselves among their colleagues to secure a seat on the tax-writing committees in the next Congress
- Committee on Ways and Means potential new members
  - Republicans: Vince Fong (R-CA), Brian Jack (R-GA), Tom Barrett (R-MI), Glenn Grothman (R-WI), Mike Haridopolos (R-FL), and Tony Wied (R-WI)
  - Democrats: Greg Casar (D-TX), Teresa Leger Fernandez (D-NM), Morgan McGarvey (D-KY), Marilyn Strickland (D-WA), Tim Kennedy (D-NY), Kristen McDonald Rivet (D-MI), Andrea Salinas (D-OR), Gabe Amo (D-RI), Johnny Olszewski (D-MD), Hillary Scholten (D-MI), Emilia Sykes (D-OH), Hillary Scholten (D-MI)

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2027 Changes to Tax-Writing Committees

- Senate Committee on Finance potential new members
  - Republicans: John Curtis (R-UT), Bernie Moreno (R-OH), David McCormick (R-PA), Todd Budd (R-NC), Rick Scott (R-FL), Kevin Cramer (R-ND), Pete Ricketts (R-NE), Kevin Hern (R-OH, candidate), and John Sununu (R-NH, candidate)
  - Democrats: Sherrod Brown (D-OH, candidate), Coons (D-DE), Klobuchar (D-MN), Van Hollen (D-MD)

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Preview of the 120th Congress

- Likely some form of divided government
- If they win control, House Democrats likely will focus on potential impeachment, administration oversight, and messaging bills with little prospect of being signed into law ("income equality," restoration of IRA green energy credits, extension of ACA PTC)
  - Restoring IRS funding may also be on Democrats' agenda
- If they maintain control, Senate Republicans likely will focus on judicial confirmations and pending expiration of Trump OBBBA tax relief measures at the end of 2028
  - Deductions for tips, overtime, domestic car loan interest and seniors
  - Trump accounts
  - $5,000 checks to every American (?)



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Preview of the 120th Congress

- If Democrats win control of the Senate, (Chairman) Wyden will likely increase oversight focus on tax strategies of multinational businesses (recent release on Malta), high-net worth individuals and pharmaceutical companies, along with data centers and AI
- Legislative agenda likely limited to must-pass legislation (*i.e.*, government funding)
- But don't underestimate the Trump "wild card"
  - Interest in making deals / receptivity to populist tax increases on the wealthy could lead to some bipartisan legislation
  - Presidential election is "only" two years away



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DEVELOPMENTS AT TREASURY AND THE IRS

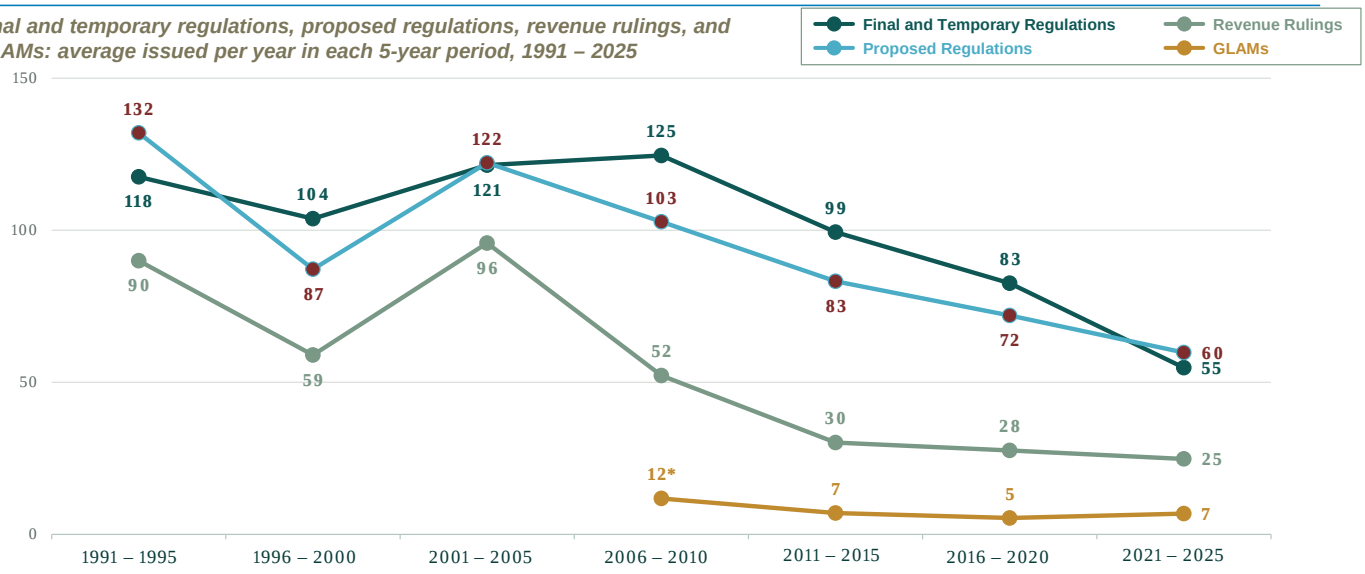
Priority Guidance Plan

- On September 29, 2026, the IRS released its Priority Guidance Plan (PGP) for 2026-27. Notable inclusions among the 121 guidance projects listed include:
  - Implementation of and guidance under the One, Big, Beautiful Bill Act, including the § 199A deduction, the determination of a U.S. shareholder's pro rata share of a CFC's subpart F income, income sourcing for inventory sales made outside the U.S., clean energy credits and "tax-aware investment fund strategies"
  - Deregulation, including Notices and/or Treasury Regulations regarding: The CAMT (*see* Notices 2025-46 and 2025-49); Interest capitalization requirements under § 263 for § 355 distributions and reorganizations; § 267 related party transactions and partnerships; Inventory valuation under § 471; § 1503(d) intercompany transactions and items arising from stock ownership (*see* Notice 2025-44)
  - IRS issued Notice 2026-58 on September 30, 2026, officially removing 71 pieces of outdated tax guidance
  - Guidance on the tax treatment of transactions involving digital assets
- The 121 projects is up from 105 on the 2025-2026 Plan but still down materially from 231 on the 2024-2025 Plan
- The IRS recently reported a 28% decline from FY 2025 to FY 2027 (budget) in the number of full-time employees dedicated to "regulatory" matters, including published guidance, PFAs and PLRs

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Long-Term Guidance Trends

Final and temporary regulations, proposed regulations, revenue rulings, and GLAMs: average issued per year in each 5-year period, 1991 – 2025



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Enforcement Update

- Under the Biden Administration, the IRS received over $45 billion in long-term funding earmarked for enforcement, effectively doubling the IRS's enforcement budget over prior years (in FY 2025, the IRS's total budget was $12.3 billion).
  - This prompted the IRS to expand its enforcement activities against high-income taxpayers and large businesses, with the goal of increasing large partnership audits ten-fold by 2026 utilizing BBA audit procedures.
- Starting even before the change in administration, this additional funding has come to an abrupt halt, as tens of billions of dollars have been clawed back from those previously allocated funds.
  - Continued proposed cuts to IRS enforcement funding
  - Dramatic decline in IRS headcount
  - IRS leadership turnover
  - CEO but no confirmed or acting commissioner
- Recent announcement of 1,000 hires for LB&I and SB/SE

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Broader Fiscal Issues Driving Tax Policy & Enforcement

- The annual budget deficit for 2026 is projected to approach or exceed $2 trillion
  - ~$4.8 in revenue (96% collected by the IRS) with ~$6.8 trillion in expenditures
- National debt = $40 trillion in total, growing by $7 billion/day
  - $121,000 for every American
- Mounting government borrowing costs:
  - From 2017 through 2021, the average net borrowing cost was $332 billion per year, growing to $970 billion in 2025
  - For 2026 the borrowing cost is projected to exceed $1 trillion and will continue to grow
- The Social Security Trust Fund is < six years from insolvency

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Concluding Observations

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