Tax Cuts and Jobs Act:
What Happens if the Sunset Doesn't Sunset?

"No man ever steps in the same river twice, for it is not the same river and he's not the same man." - Heraclitus

Key Takeaways

- The Trump presidency alongside a Republican led House and Senate will likely make permanent many of the provisions listed in the TCJA.
- Planning techniques previously considered as a result of the anticipated TCJA sunset are likely to be adjusted according to individual circumstances.

Earlier this year Wellspring published an insights piece titled "Tax Cuts and Jobs Act Expiration: What You Should Know to Plan Ahead". The landmark tax law policy implemented in 2017 by the first Trump administration named short-hand the TCJA was passed through a budget reconciliation process, a legislative procedure that allows for expedited considerations for changes to law requiring a simple majority in the Senate rather than the sixty-vote threshold. While these changes may be implemented, there are certain restrictions to what can be included in a reconciliation bill including:

- Increasing the deficit outside of the 10-year budget window
- Non-budget changes
- Changes to Social Security

As such, the planning community has been preparing for the "sunset" of the TCJA at the end of 2025, and with it an end to some of TCJA's provisions that impact both individuals as well as businesses. With the election results earlier this month however it appears that we may need to rethink everything we thought we might know, as is it believed that the Trump presidency in its second non-consecutive term alongside a Republican led House and Senate would like to make permanent many of the provisions listed in the TCJA.

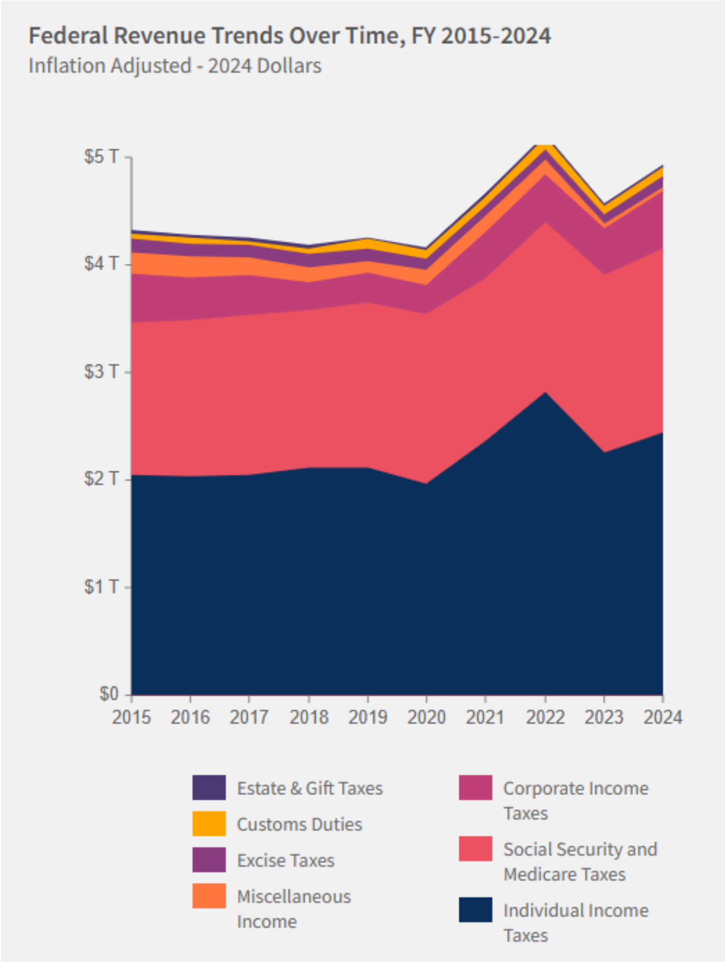
As the Greek philosopher Heraclitus remarked "no man ever steps in the same river twice, for it is not the same river and he's not the same man". In other words, the only thing that does not change is change itself.

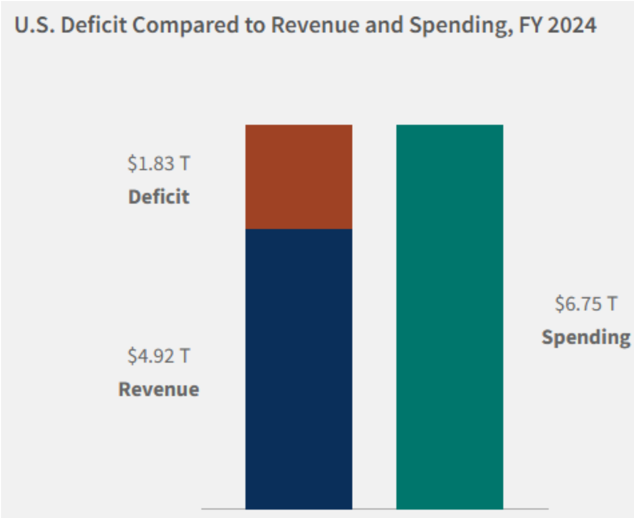
Something important to understand at its core is that law is simply a set of rules and a construction to provide incentives for individuals and groups. Tax law is no different, and part of our job as professionals is to understand the rules – whatever they may be – and advise on how to play the game most effectively with each iteration of the current set of rules.

It is not yet clear exactly how the TCJA would be made permanent or at least extended, as there are not just considerations for *what type of impact this will produce going forward* but also *how will we pay for it?*

The government is rapidly approaching another "fiscal cliff" in early 2025, where it is expected that once again, they would agree to raise the debt ceiling to allow for these changes and other proposed updates to occur without the American Government defaulting on their debt obligations and sending a shock wave through the global economic system. This is not a partisan issue, but rather it is a global issue.

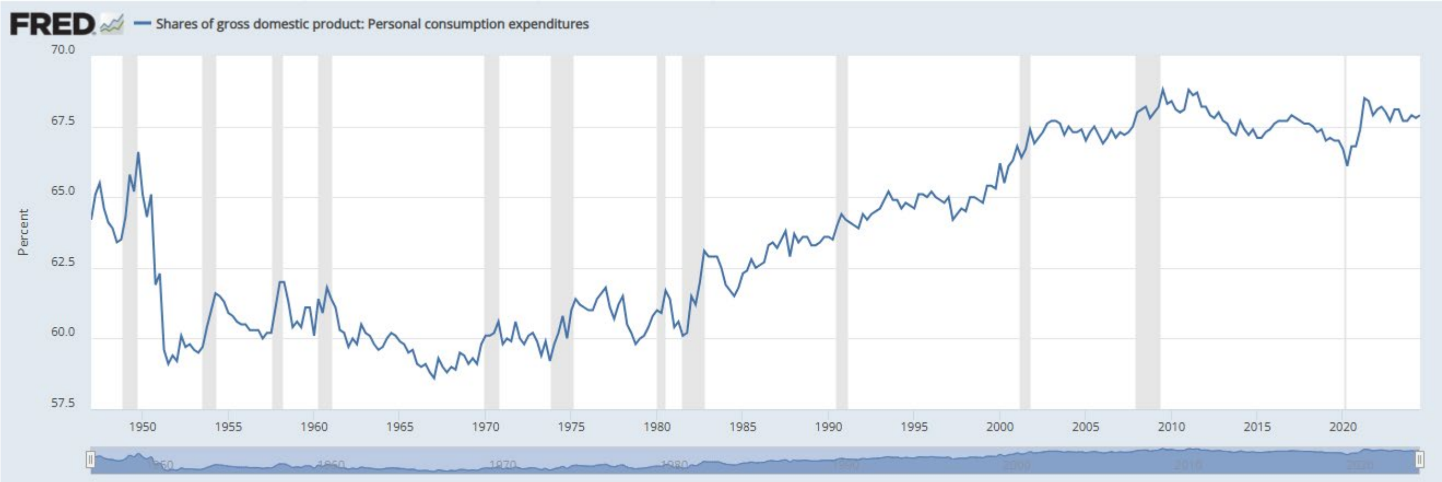
According to www.Fiscaldata.treasury.gov, a combined ~60% of total government revenue is derived from individual income taxes (~$2.24T or 49%) as well as corporate taxes (~$0.43T or 11%).





Source: FiscalData.Treasury.gov; data as of 9.30.24; inflation data source Bureau of Labor Statistics

If the plan therefore is to make permanent the TCJA and keep individual and corporate tax rates lower for longer, the "incentive" attempting to be created is that the more money that Americans *keep in their pockets*, the more they will have available to spend. And since Consumer Spending makes up ~60% of the United States' Gross Domestic Product, the measure for "economic health", the bet is that the reward of economic growth outpaces the risk of potentially lower revenue generated through income taxes.



Source: U.S. Bureau of Economic Analysis; FRED Economic Data

What's Next?

There were other promises made on the campaign trail related to "no tax on tips", as well as exempting overtime pay for employees and also eliminating the levy on social security benefits. While these items would likely require more than another reconciliation measure, lets focus on what is more likely to occur:

- Individual taxpayer rates are likely to remain at current levels, and not increase at the end of 2025.
    - Planning strategies such as deferring larger charitable donations into 2026 for maximizing deductions no longer make sense as a result, and considerations for charitable planning can be examined currently without waiting.
- Similarly, corporate tax rates will likely stay lower for longer, and in some instances could potentially decrease.
    - If this is the case, it is also likely that section 199A related to flow-through businesses' "Qualified Business Income Deduction" (QBID) would adjust to find parity for individual income taxpayers.
    - Without parity, individual business owners would potentially look to change their corporate structures from a pass-through entity to a C-corporation.
- State and Local Tax Deductions (SALT) were capped at $10,000 and individual Standard Deduction doubled ($30,000 for married couples filing jointly and $15,000 for individual filers in tax year 2025), in an attempt to "simplify" the tax code and allow more taxpayers to save on time/expense of reporting itemized deductions.
    - While it is projected that the cap on SALT deductions was a net revenue generator, it is unclear as to whether that cap would remain at $10,000 or if it would be increased. The latter is preferred for those who live in states with higher income-tax rates.
    - Regardless of the outcome, taxpayers who are owners of businesses or entities that elect pass-through tax status should explore whether their state allows for the execution of the Pass-Through Entity Tax payments (PTET), and how that might impact their personal estimated individual income taxes.
- Bonus depreciation at the business level has been steadily decreasing but might be back on the table.
    - If levels increase back up to 100% business owners should consider their current assets and tax situation to potentially take advantage of the upfront lump-sum depreciation deduction.

- If capital gains rates on long-term assets decrease from 20% to 15%, it may make sense to defer rebalancing taxable portfolios into 2025 to take advantage of the decreased tax cost.
    - As with all things investment related, try not to let the “tax tail wag the dog”. Portfolio rebalances makes sense ahead of this potential change, especially if the projected upside of the rebalance outweighs both the risk of waiting, as well as the estimated tax cost of the rebalance.
- Non-income tax related, but it is likely that estate exemptions could remain elevated beyond 2025 and not be cut in half (inflation adjusted).
    - While the “push to get things done” would get a little less condensed in terms of timeframe, it is still likely that estate considerations would be taken into account for certain planning situations, especially as it relates to philanthropy, family legacy planning and potential liquidity events.

There is still quite a lot that is unclear, and we “don’t know what we don’t know”, but what is clear is that planning techniques previously considered as a result of the anticipated TCJA sunset are likely to be adjusted according to individual circumstances. Yet while the rules themselves may change, our “game” remains the same – to provide clients with planning advice that best meets their goals and objectives as individuals and as a family.

We appreciate the confidence you have placed in Wellspring to be your trusted advisor. Please feel free to contact us at any time to discuss changes to your financial situation.

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