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Premium tax credit at the intersection of tax and budget policy, renewed focus on section 899

As lawmakers continue to navigate the intersection of tax and budget policy, the extension of the enhanced premium tax credit has emerged as a key issue in ongoing negotiations. While a second reconciliation bill remains a possibility, much of the recent discussion has centered on how this credit might be incorporated into a broader fiscal agreement. The path forward, though, remains uncertain.

Premium tax credit

The potential extension of the enhancements to the tax credit is drawing particular attention from both parties. Whether Congress extends them (with or without modifications) or fails to act on them in 2025 could signal whether it will be possible to develop bipartisan support for advancing additional tax measures this year.

Originally enacted under the Affordable Care Act (P.L. 111-148), the credit helps qualifying individuals and families in affording health coverage obtained through the Health Insurance Marketplace, also known as the Exchange. It was later expanded through the American Rescue Plan Act (P.L. 117-2) and the Inflation Reduction Act (P.L. 117-169) to broaden eligibility and increase the subsidy benefit. These enhancements are currently set to expire for tax years beginning after December 31, 2025.

A possible extension of the enhanced premium tax credit has emerged as a key sticking point in negotiations over the FY2026 funding process. Democratic lawmakers are framing the extension as an important countermeasure to what they say are damaging changes to Medicaid enacted by Republicans as part of the law commonly referred to as the One Big Beautiful Bill Act (OBBBA, P.L. 119-21). The discussion continues to unfold amid broader budget discussions, with Congress currently weighing a possible continuing resolution (CR) in an effort to avoid a partial government shutdown when the federal fiscal year ends on September 30.

Republican positions: Republican lawmakers have expressed a range of views on the future of extending the enhanced premium tax credit – reflecting both ideological and political considerations – with many fiscal conservatives opposed to extending the credit while some moderates are backing it. House Freedom Caucus Chair Rep. Andy Harris (R-Md.) has opposed extending the enhancements beyond 2025, and has dismissed the credit as a COVID-era measure that should expire, saying – "Covid is over, they should go away." He further told reporters late in the week that his group has met and reached a consensus: "We oppose these free giveaways to insurance companies."

By contrast, House Ways and Means Committee Chairman Jason Smith (R-Mo.) has approached the issue with greater caution, recently highlighting concerns about how the credit is allocated. Smith told ***Tax Notes*** that he has not taken a position on extending the enhancements yet, however, he recently stated that reforms would be necessary for any extension to move forward, particularly in regard to subsidies for high-income earners. He gave the following example on ***Bloomberg TV*** to illustrate his concerns:

"The fact that if you make 600,000 in Scottsdale, Arizona, you get subsidized for your health care. That's not appropriate and so those kind of reforms have to be maintained if there's any step moving forward on extending those [enhancements to the] credits."

Other Republican House members – particularly some of those from swing districts – have expressed interest in a short-term extension, with a one-year renewal of the credit emerging as a possible compromise. (For prior coverage on bipartisan proposed legislation to extend the enhancements to the premium tax credit, see *Tax News & Views*, Vol. 26, No. 36, September 5, 2025.)

In the Senate, Josh Hawley (R-MO) stands out as part of a minority within his party to publicly support the extension of the subsidies. At an event earlier this summer, he warned that failing to extend the credit could lead to "exploding" insurance costs and unaffordable premiums for working families. He added that "we're seeing premium increases...which are unbelievable. We're looking at anything from 10 percent to 30 percent increases in the cost of health insurance."

Democratic unity: Democrats continue to push for a permanent solution and have maintained that addressing health care costs is an important priority in ongoing discussions around a bill to avert a partial government shutdown at the end of the month. Senate Minority Leader Chuck Schumer (D-N.Y.), along with all 46 Democratic senators (including 2 Independents who caucus with the Democrats), introduced the Protecting Health Care and Lowering Costs Act (S.2556), which would permanently extend the enhanced premium tax credit. Schumer framed the issue as a fight to protect access to affordable health care and reverse the changes to Medicaid enacted earlier this year.

Sen. Jeanne Shaheen (D-N.H.) also issued an urgent call to action, warning that failure to extend the enhancements would result in steep premium hikes and increased strain on emergency services. She emphasized the need to pass her legislation – the Health Care Affordability Act (S.46)- to preserve access to affordable coverage for millions of Americans.

"At a time when hardworking Americans are facing higher costs due to inflation, we should make every effort to lower prices where we can. That's why I'm reintroducing our Health Care Affordability Act and urging my Republican colleagues to come to the table in good faith to keep costs from skyrocketing for millions," said Shaheen.

Outlook and challenges

While the extension of the enhanced tax credit could be included in a broader legislative package, its fate is tied to the procedural hurdles and competing priorities in the FY2026 budget process. In the Senate, passage of annual appropriations legislation requires at least 60 votes, making bipartisan support essential. It is possible that, if the credit is part of a budget funding bill, it could shift the political calculus – potentially costing Republican votes while gaining support from Democrats.

Tensions over the budget are already surfacing. Earlier in the week, Speaker Mike Johnson (R-La.) placed responsibility for a government shutdown on the Democrats, telling reporters – "The ultimate question of whether there's going to be a government shutdown at the end of the month is going to be up to congressional Democrats. And that's just the way it is." Later, it was reported that House Republicans are preparing to advance a clean CR during the week of September 16 – a measure that, as noted below, Democrats have pledged to reject.

Democratic leaders have sought to shift the narrative, with a united message on their priorities. Leader Schumer and House Minority Leader Hakeem Jeffries (D-N.Y.) made joint statements on Thursday, emphasizing concerns about health care accessibility and costs and the upcoming spending bill. Schumer asserted that "[w]hat the Republicans are proposing is not good enough for the American people and not good enough to get our votes." Demonstrating alignment, Jeffries stated that "House and Senate Democrats are prepared to enter into a bipartisan spending agreement that meets the needs of the American people, including as it relates to their health care and economic well-being."

When asked about the extension of the enhanced premium tax credit, Schumer did not go into detail, but emphasized that any deal must reverse what he described as damage caused by the GOP to American's health care. He further stated that "if they try to jam something down our throats without any compromise…they ain't gonna get the votes – plain and simple."

Unlike the budget negotiations that played out earlier this year, Schumer and Jeffries now appear united on funding priorities. In March, Schumer frustrated many Democrats when he announced on the Senate floor his support for advancing a Republican-drafted spending measure to prevent a government shutdown. (For prior coverage, see *Tax News & Views*, Vol. 26, No. 11, March 14, 2025.)

Still, the political landscape remains fluid. President Trump has not weighed in on the premium tax credit extension, despite its significance to the negotiations – his position could prove decisive in shaping the ultimate deal, especially if his support is needed to bring along reluctant Republicans. So far, Trump has only endorsed a stopgap funding bill through January 31 – a timeline notably longer than what congressional appropriators are currently seeking.

In the meantime, as the expiration date for the enhanced subsidies approaches, debate will continue in Congress as to whether, and under what circumstances, they should be extended.

Section 899

Shifting from domestic tax credits to international tax policy, another provision drawing renewed attention is proposed section 899. Originally included in the House version of the OBBBA but omitted by the Senate, proposed section 899 would increase tax rates on foreign persons in jurisdictions that are determined to impose an unfair foreign tax on US taxpayers. For purposes of proposed section 899, an unfair foreign tax generally includes an undertaxed profits rule (UTPR), a digital services tax (DST) and certain other taxes. (For prior coverage, see *Tax News & Views*, Vol. 26, No. 19, May 14, 2025.)

Ultimately, section 899 was left on the cutting room floor in exchange for a commitment by the G-7 that the US could live "side-by-side" with the new global minimum tax rules. (For prior coverage, see *Tax News & Views*, Vol. 26, No. 29, June 28, 2025.)

During a September 9 meeting with Republican members of the House Ways and Means Committee, Kenneth Kies, assistant secretary for tax policy at the Treasury Department, indicated that the department would support efforts in Congress to revive the proposed section 899 provision if the OECD fails to follow through on the G-7's commitment to exempt US-parented multinational groups from certain aspects of the global minimum tax rules.

At this point, lawmakers are keeping their options open for how and when to reintroduce section 899 – if the OECD does not comply with the agreement. One possibility, according to Republican taxwriter Ron Estes of Kansas, is to include it in a year-end spending bill – an approach he described as "always an option." That said, he noted that he still hopes for an agreement on the G-7 framework. Earlier this year, Estes, joined by all the GOP taxwriters – other than the chairman of the taxwriting committee, Jason Smith – reintroduced the Unfair Tax Prevention Act (H.R. 2423) that would tighten the US base erosion and anti-avoidance tax rules for companies based in jurisdictions that impose a UTPR or other exterritorial tax on US multinationals. (For prior coverage, see *Tax News & Views*, Vol. 26, No. 13, April 4, 2025.)

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Veteran tax attorney Donald Korb seeks return as IRS chief counsel

Donald Korb, who previously served as IRS Chief Counsel under President George W. Bush from 2004 to 2008, is poised to return for a second term in that role, marking his fourth tenure at the IRS and his second time as the agency's chief counsel – if confirmed. The Senate Finance Committee held a hearing on September 10, 2025, to consider his nomination for chief counsel of the IRS and assistant general counsel at the Treasury Department. Korb's confirmation would come at a time of ongoing leadership turnover at the IRS, following Commissioner Billy Long's recent departure after less than three months in office. Treasury Secretary Scott Bessent is now serving as acting commissioner and Kenneth Kies, the assistant secretary for tax policy at the Treasury Department, is acting chief counsel.

The significance of the chief counsel role was underscored during the hearing, given its centrality to tax administration and policy development. Appointed by the president with the advice and consent of the Senate, the IRS' top legal counsel serves as the principal advisor to the IRS commissioner on all matters relating to the interpretation, administration, and enforcement of the tax code, including playing a key role in developing guidance and regulations that implement newly enacted tax legislation, such as guidance expected to be issued under the law commonly referred to as the One Big Beautiful Bill Act (OBBA, P.L. 119-21)

With more than 50 years of tax experience in both the public and private sectors, Donald Korb's qualifications were not in question. Senate Finance Committee Chairman Mike Crapo (R-Idaho) and Ranking Member Ron Wyden (D-Ore.) both acknowledged his extensive background in tax law. However, the panel did raise other issues, including past remarks Korb made about former IRS officials, his views on taxpayer privacy – which he described as one of the "cornerstone principles" of our tax system – and his stance on the taxpayer whistleblower program. On the latter, Korb stated that he is now "100 percent supportive" of the program.

Additional topics

In addition to questions about Korb's prior statements and positions on taxpayer protections, the panel also addressed several other issues during the hearing, including:

Partnerships: Republican Sens. Marsha Blackburn of Tennessee and Roger Marshall of Kansas raised concerns about what they viewed as the IRS unfairly targeting pass-through entities as part of its audit program. They argued that the IRS has relied on Rev. Rul. 2024-14 – which addresses the application of the economic substance doctrine to a series of transactions involving related-party partnerships – as evidence of this targeted approach and called for the ruling to be withdrawn.

Korb noted that he had reviewed the ruling prior to the hearing and committed to working with the Treasury's tax policy group to address the concerns raised and help them determine next steps. "I think they decided to… go after certain partnerships," Korb said, expressing his view that the audit program that the Biden administration developed specifically focused on certain partnerships.

Regulations: Another issue raised during the hearing involved the implementation of regulations under the OBBBA – which reinstated a partial deduction for charitable contributions of individuals who do not elect to itemize. Korb said that he would work with the "dedicated attorneys" in the Office of Chief Counsel to ensure timely issuance of guidance related to the provision.

Corporate tax incentives and enforcement: Sen. Elizabeth Warren (D-Mass.) criticized a provision in the OBBBA that retroactively allows for the full expensing of domestic research and experimental (R&E) expenditures, calling it one of the most "ridiculous breaks in the bill." She questioned Korb on how providing billions to corporations for research already conducted would benefit American families, while emphasizing that Korb – as IRS chief counsel – would be responsible for drafting the implementing guidance. Korb was noncommittal and maintained that, while his office administers the tax law, it is Congress that enacts it, noting that he had not yet reviewed the specifics of the bill.

Warren also noted that measures like the retroactive treatment of R&E expenditures could allow some large corporations to lower their tax liabilities enough to trigger the corporate alternative minimum tax (CAMT), which was created in the Inflation Reduction Act, (P.L. 117-169) to ensure large corporations pay at least a 15 minimum tax rate. As a result, she pressed Korb on the implementation of the CAMT, specifically asking him whether he would commit to enforcing the law as written and refrain from drafting rules that allow corporations to circumvent it – particularly given the potential for significant reductions in corporate tax bills.

Korb stated he had not studied every element of the bill and reiterated that tax policy is the responsibility of the Treasury, though emphasizing that the Office of Chief Counsel works "hand-in-glove" with Treasury lawyers and that he would be involved in approving related regulations. At this stage, though, he said he was not prepared to offer a definitive view.

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Ways and Means Oversight Subcommittee to hold hearing on tax-exempt hospitals

House Ways and Means Committee Chairman Jason Smith (R-Mo.) and Oversight Subcommittee Chairman David Schweikert (R-Ariz.) announced that a hearing will be held on Tuesday, September 16, 2025 at 2:00 pm examining how tax-exempt hospitals meet the community benefit standard.

The committee's website does not include a witness list as of press time.

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