A Path to TCJA Repeal

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ACKNOWLEDGEMENTS

This memo is the result of an iterative, collaborative effort among tax policy experts. The authors are extremely grateful to the following partners for their many valuable contributions to this work: Lily Batchelder, Kimberly Clausing, Chye-Ching Huang, David Kamin, Greg Leiserson, Chuck Marr, Jessica Schieder, and Meg Wiehe. Additionally, we would like to thank Grace Western for her excellent research assistance.

EXECUTIVE SUMMARY

The 2017 tax law was the culmination of decades of trickle-down tax policy that worsened inequality, increased the harmful concentration of economic power, and drained trillions of dollars in revenue that could have been dedicated to investments in a stronger, more inclusive economy. Progressives have rightly identified reversing TCJA's tax cuts as a top priority.

On this, the American people are on our side. The bill was opposed by the public by a nearly 2:1 margin when it was passed,[1] and is still opposed by more Americans

1 Newport, Frank. 2018. "Americans Remain Negative on Tax Bill After Its Passage." Gallup News, January 10, 2018. https://news.gallup.com/poll/225137/americans-remain-negative-tax-bill-passage.aspx

than support it.[2] Meanwhile, increased taxes on the wealthy and corporations—who Americans correctly perceive to be the beneficiaries of the TCJA—are supported by strong majorities.[3]

Yet while progressives agree that reversing the Trump tax scam should be a high priority, there has been little focus on how exactly the law should be dismantled. A straight repeal of the law is impractical and would only restore the deeply flawed and inadequate tax code that existed in 2017. The law is complicated: It included some tax cuts for people with low- and moderate-incomes alongside much bigger tax cuts for corporations and the wealthy, and it reduced some tax breaks for the wealthy and corporations even as it gave them massive tax cuts on net. Some of its major provisions are permanent, but others are set to expire over the next several years, creating a series of decision points for Congress.

Given all of these complicating factors, it is critical that progressives forge a united strategy for dismantling the 2017 law and reversing its regressive and harmful effects.

Any TCJA repeal bill must, at a minimum:

- Immediately repeal all of the tax cuts for the rich and corporations, which have worsened inequality
- Raise large amounts of progressive revenue, at a bare minimum fully reversing the entire $2 trillion revenue loss from TCJA
- Fix the broken international corporate tax system created by TCJA, which allows multinational corporations to dodge taxes and rewards the offshoring of profits and jobs
- Extend the full benefit of the TCJA's Child Tax Credit expansion to the millions of families who were left out

This memo creates a roadmap to an immediate repeal package that meets these goals, while holding all but 3% of tax units harmless. This memo does not fully outline what a comprehensive tax reform would look like, and its recommendations should not be considered to be a replacement for bigger, structural changes to our tax system. There are many important proposals for reforming our tax code to raise needed revenue and rebalance power in our economy away from the rich and corporations, that we hope can be implemented soon. And there are many critical changes for lower-income Americans, like an expansion of the childless worker EITC, that would be dramatic improvements to our tax code but are beyond the scope of this project. Nevertheless, it is important to have a fleshed out example of what TCJA repeal could look like in case a legislative opportunity arises.

2 Newport, Frank. 2019. "US Public Opinion and the 2017 Tax Law." Gallup News, April 29, 2019. https://news.gallup.com/opinion/polling-matters/249161/public-opinion-2017-tax-law.aspx

3 Tax March, Americans for Tax Fairness, ALG Research. 2019. "Poll Finds Raising Taxes on the Rich is a Top Priority for Voters." https://taxmarch.org/wp-content/uploads/2019/04/ALG-TAX-THE-RICH-TAX-MARCH-APR-02-2019-MEMO-FINAL.pdf

Summary of Plan: Immediate Repeal of TCJA for the Rich and Corporations, Shielding the Middle Class, and Providing Crucial TCJA Fix for Low-Income Families

Personal income tax:

- Restore the top 3 personal income tax rates and brackets—33 percent, 35 percent, and 39.6 percent
- Lower the phase-out thresholds for the TCJA's expanded Alternative Minimum Tax (AMT) exemptions to $200,000/$250,000
- Phase out the section 199A twenty percent deduction for passthrough income at incomes above $200,000/$250,000
- Shield households with incomes below $200,000/$250,000 from the cap on State and Local Income Tax deductibility (SALT Cap), and *permanently extend this modified cap*
- Restore the pre-TCJA estate tax
- Restore and permanently extend the TCJA's limitation on the deductibility of pass-through losses against other types of income, and restore the limitation for years 2018-2020 which was retroactively lifted in the CARES Act.
- Fix the Child Tax Credit to ensure that it is available to all families with children, by making the credit fully refundable with no phase-in or earnings requirement and available to all children regardless of whether they have a Social Security Number (SSN) or an Individual Tax Identification Number (ITIN).

Corporate income tax:

- Repeal the foreign-derived intangible income deduction (FDII)
- Replace TCJA's tax on global intangible low-taxed income (GILTI) with a "per-country" minimum tax at a higher rate and with no allowance for tax-free foreign profits
- Raise the corporate tax rate

This plan immediately repeals TCJA's biggest tax giveaways to high-income households, while holding all households with incomes less than $250,000 ($200,000 for individuals) completely harmless. Under this plan, only three percent of households would receive any increase in their personal income tax. The plan also fixes a major flaw in the TCJA, by ensuring that all families with children, including the lowest-income families, and immigrants, receive the full benefit of the Child Tax Credit. The plan also raises significant revenue from the highest-income households over the long-run by permanently extending the cap on the deductibility of state and local taxes, after modifying it to protect all but the wealthiest taxpayers.

Revenue and distributional tables for this package can be found on pages 11 and 12 of this document. All personal income tax revenue and distributional tables were created by the Institute on Taxation and Economic Policy.[4]

Repeal of TCJA's corporate giveaways is more complicated than simply repealing the law wholesale. For corporations, TCJA included modest revenue-raising provisions and massive tax cuts at the same time. This plan would keep the revenue raisers while repealing the giveaways, and create corporate tax rules that are even stronger than what was in effect in 2017. It reforms international corporate taxation to reduce incentives to shift operations and profits overseas, and brings the corporate rate back up to restore corporate taxes as a critical part of a progressive tax system.

WE MUST IMMEDIATELY REPEAL INDIVIDUAL INCOME TAX CUTS FOR THE RICH

This plan begins by immediately repealing the enormous tax cuts doled out to wealthy households under the TCJA:

- ***Restore the top 3 personal income tax rates and brackets.*** Restore the top ordinary income tax rates to 33 percent, 35 percent, and 39.6 percent. Under TCJA, for 2018 through 2025, the top three rates are 32 percent, 35 percent, and 37 percent, with different income thresholds. Restoring the top three pre-TCJA brackets would not affect married couples with adjusted gross income (AGI) below $250,000 or unmarried taxpayers with AGI below $200,000—in fact, the thresholds for the 33 percent bracket are above these numbers for taxable income, so the AGI of affected taxpayers will be substantially higher.
- ***Lower the phase-out thresholds for the TCJA's expanded Alternative Minimum Tax (AMT) exemptions to $200,000/$250,000.*** The AMT is an additional tax calculation affecting high-income households that applies lower tax rates than the ordinary tax system, but disallows many deductions. If a tax unit would pay more under the AMT than under the regular tax system they must pay this higher amount. The AMT prevents many of the richest households from gaming the tax system to pay very little in taxes, but the TCJA eviscerated the AMT, such

4 All revenue estimates use a budget window beginning in 2022. This is not meant to suggest that Congress should wait to enact these changes—we support making these changes retroactive to the entire 2021 tax year, as was done in August of 1993.

that only 0.2 percent[5] of taxpayers now pay it, down from 5.2 percent in 2017.

- ***Phase out the section 199A twenty percent deduction for passthrough income at incomes above $200,000/$250,000.*** The TCJA inserted a new "passthrough deduction" allowing many with business income to pay no taxes on twenty percent of that type of income. TCJA's proponents misleadingly labeled it a "small business" tax cut, but it provides two thirds of its benefits to the highest income households. By effectively establishing special lower rates for some forms of business income, the passthrough deduction gives the wealthy new ways to game the tax code to avoid paying their fair share, makes the tax code more complicated and more unfair, and benefits the owners of large businesses more than small businesses. This option would phase out the deduction for business owners with AGI above $200,000 ($250,000 for couples). Note that this is a significant concession: the passthrough deduction is bad policy and should ideally be repealed. It complicates the tax code, and results in similarly situated taxpayers paying different effective rates depending on their status as employees or independent contractors/self-employed. This creates incentives for workplace "fissuring"—the shift toward outsourcing work outside a firm that often results in lower benefits and weaker labor protections—and big opportunities for rich taxpayers to play games with their compensation to get a lower rate than wage earners. This option would be a compromise that immediately eliminates the deduction for high-income business owners, who receive the bulk of its benefits, while retaining it for others through 2025, during which time Congress can consider more comprehensive progressive tax changes including those that truly benefit and support small businesses.
- ***Restore the pre-TCJA estate tax.*** The estate tax is a tax on a small sliver of very wealthy estates. Before TCJA, the estate tax's large exemption meant that the first $11 million of a married couple's wealth could be passed on to heirs tax-free—and in reality, the planning strategies employed by the wealthy meant that they could avoid tax on substantially more than $11 million. TCJA doubled the estate tax exemption to $22 million. This option simply repeals the TCJA estate tax change. Any more comprehensive approach should go much further. The estate tax is the most progressive part of the tax code, and it was eviscerated by the 2001/2003 Bush tax cuts, before which the exemption was $675,000.

It is absolutely critical that the high-end tax cuts are repealed immediately. It is the right policy, as these kinds of trickle-down cuts have supercharged the growth in inequality in the United States over the past 40 years, while delivering none of the promised economic benefits. That inequality has been laid bare during the pandemic, as low-wage workers have been laid off at much higher rates, while most upper-income households have lost no employment income and the stock market holdings of the wealthy have actually increased in value. It is the right politics—TCJA is incredibly unpopular.

5 Urban-Brookings Tax Policy Center Table T18-0145. Aggregate AMT Projections, 2016-2028. https://www.taxpolicycenter.org/model-estimates/baseline-alternative-minimum-tax-amt-tables-oct-2018/t18-0145-aggregate-amt.

It is also the right legislative strategy.

The TCJA was a massive giveaway to the wealthy and corporations, but it also included small tax cuts for most taxpayers and substantial tax cuts for the upper middle-class. All of these individual-side provisions are set to expire together at the end of 2025. The experience of the Bush tax cuts showed that it is very difficult to end tax cuts for the rich if they are tied to expiring tax provisions for the middle class. In 2010, with Republicans holding action on middle-class tax cuts and other key priorities hostage to insist on extending tax cuts for the rich, the Democratic Congress and President Obama agreed to extend *all* of the expiring Bush tax cuts for two more years. And at the end of 2012, even with a Democratic election mandate, Congressional Republicans forced President Obama to extend most of the Bush tax cuts, with large benefits going to the rich.

Under the option presented here, the TCJA tax cuts for the rich would be severed from the tax provisions affecting low- and middle-income households. This would allow Congress to consider further progressive tax reform from that baseline—a tax code that is more progressive and raises more revenue.

Additionally, severing the tax cuts for the rich from those for everyone else makes sense in the current environment. The economic depression created by the COVID-19 health crisis will be held up as a reason not to raise taxes, but this initial package will only affect 3% of households—households at the very top, who are by and large insulated from current economic strife. There is no reason not to move this package immediately, and there is no reason that Congress needs to address the rest of TCJA's individual income tax provisions, which don't expire for several years, at the same time.

While repealing the worst giveaways to rich households is critical, progressives should be clear-eyed that it does not raise nearly enough revenue. Because all of the provisions repealed here expire at the end of 2025, and because this approach would hold every family below $250,000 in income harmless and thus leave in place large tax cuts for richer households, the total 10-year score for this package is only around $500 billion.

Additionally, we understand that there are many lawmakers who are interested in repealing the cap on the deductibility of state and local taxes (SALT Cap) introduced by the TCJA. This is a mistake, as the cap is a major progressive revenue raiser, and the vast majority of the benefits of repeal flow to the wealthiest—more than half of the benefits flow to the top one percent alone.[6] We propose instead a modification of the SALT Cap to address concerns about middle-income families: the SALT Cap would phase in for households making more than $200,000 for individuals or $250,000 for married couples, and be eliminated entirely below these thresholds.

If this adjustment to SALT is included, the total revenue from the repeal package drops to only around $420 billion. This is also a significant concession on progressivity: it is a tax cut concentrated on households earning between $100,000

6 Center on Budget and Policy Priorities. 2019. "Benefits of SALT Cap Repeal Would Flow Heavily to the Top." https://www.cbpp.org/benefits-of-salt-cap-repeal-would-flow-heavily-to-the-top

and $500,000 per year. We offer this compromise position to avoid full SALT Cap repeal, which would be much worse. The two-year suspension of the cap included in the HEROES Act would cost almost $140 billion if enacted, with the vast majority flowing to the very richest households.[7]

Table 1: Raising Top Rates and Shielding All but the Top from Other Provisions Raises Very Limited Revenue

(All numbers in billions of dollars)

	2022*	2023	2024	2025	2026	2027	2028	2029	2030	2031	10 yrs
Restore top three rates and brackets*	32	55	58	61	25	-	-	-	-	-	232
Phase out pass-through deduction between AGI of $250k-$350k/ $200k-$250k	22	45	52	55	31	6	-	-	-	-	210
Phase in cap on SALT deductions for AGI of $250k-$350k/ $200k-$300k	(12)	(21)	(22)	(24)	(10)	-	-	-	-	-	(89)
Lower AMT exemption phase outs phase out starting point to $200k/$250k	1	2	2	2	1	-	-	-	-	-	7
Restore pre-TCJA estate tax	10	10	11	11	11	3	-	-	-	-	56
TOTAL	43	81	90	94	46	6	-	-	-	-	416

Carving out 97% of households from TCJA repeal is a significant compromise that, unfortunately, forces us to leave in place large tax cuts for the top. As discussed in more detail below, these households *also* benefit from many of the provisions that provide tax cuts to households lower down the income scale.

As shown in Table 4, this package would raise all of its revenue from three percent of tax units, while *cutting taxes* for 8 percent, including almost half of taxpayers with between $200,000 and $500,000 in income.

7 The Joint Committee on Taxation. 2020. "Estimated Revenue Effects Of The Revenue Provisions Contained In H.R. 6800, The "Health And Economic Recovery Omnibus Emergency Solutions ('Heroes') Act," Scheduled For Consideration By The House Of Representatives On May 15, 2020." https://www.jct.gov/publications/2020/jcx-15-20/. Center on Budget and Policy Priorities. 2019. "Benefits of SALT Cap Repeal Would Flow Heavily to the Top." https://www.cbpp.org/benefits-of-salt-cap-repeal-would-flow-heavily-to-the-top

TABLE 2: Limited TCJA Repeal Shields All but the Richest Taxpayers

Income group	Average income	Tax change (1000's)	Avg tax change	Tax change as % of income	Share of tax change	Share w/ tax cuts	Avg change for those w/tax cuts	Share w/ tax hikes	Avg change for those w/ tax hikes
Less than $10,000	$6,000	$0	$0	0.0%	0%	0%	$0	0%	$0
$10,000 to $20,000	$15,400	$ –300	$0	0.0%	0%	0%	$0	0%	$0
$20,000 to $30,000	$25,000	$ –7,200	$0	0.0%	0%	0%	$0	0%	$0
$30,000 to $40,000	$35,000	$ –12,700	$0	0.0%	0%	0%	$0	0%	$0
$40,000 to $50,000	$44,800	$ –23,100	$0	0.0%	0%	0%	$0	0%	$0
$50,000 to $75,000	$61,600	$ –251,300	$ –10	0.0%	0%	2%	$ –500	0%	$0
$75,000 to $100,000	$86,600	$ –746,400	$ –40	0.0%	-1%	6%	$ –760	0%	$0
$100,000 to $200,000	$137,800	$ –7,157,000	$ –250	-0.2%	-8%	21%	$ –1,210	0%	$0
$200,000 to $500,000	$287,700	$ –2,123,900	$ –190	-0.1%	-3%	48%	$ –2,540	17%	$ + 5,950
$500,000 to $1,000,000	$653,800	$ + 22,795,400	$ + 11,690	1.8%	27%	13%	$ –5,090	83%	$ + 14,790
$1,000,000 and over	$2,957,600	$ + 71,936,600	$ + 75,910	2.6%	85%	2%	$ –5,470	97%	$ + 78,390
Total, All Taxpayers	$99,300	$ + 84,410,100	$ + 510	0.5%	100%	8%	$ –1,770	3%	$ + 23,670

Congress should *not* tie its hands by pledging not to touch the tax cuts for *even richer* households. For example, holding all households below $400,000 harmless would carve out more than 99% of households and cut the net revenue raised by this package by around $200 billion, to only around $220 billion total over ten years.

SOME INDIVIDUAL INCOME TAX PROVISIONS IN TCJA RAISED REVENUE, AND SHOULD BE EXTENDED; OTHERS LEFT OUT MILLIONS AND SHOULD BE FIXED

While the above package is simple, it still funnels large amounts of money into the pockets of the richest Americans over the next five years, and fails to raise any additional money from these households going forward. Most rich households will still receive large benefits from the portions of the TCJA that are left in place, and then return to a pre-TCJA revenue level that reflects 40 years of trickle-down tax policy that has repeatedly ratcheted down taxes on the rich. It also leaves behind millions of low-income families from a policy that reduces child poverty and enhances the progressivity of the tax code, including millions of immigrant children who were directly and deliberately harmed by the TCJA.

But this simple TCJA repeal package can be made to raise significantly more revenue in the long run with a few tweaks. If Congress has an opening to pass the package above, we suggest *making the SALT Cap permanent, but with our suggested modifications for middle-class families, and restoring and making permanent TCJA's limit on pass-through losses:*

- **Shield households with incomes below $200,000/$250,000 from the SALT Cap, *then permanently extend this modified cap.*** One provision of the TCJA that actually raised progressive revenue was the introduction of a $10,000 limitation on the amount of state and local taxes (primarily income and property taxes) that can be deducted from income for federal tax purposes. This provision disproportionately falls on taxpayers in higher-tax jurisdictions, but in all jurisdictions it falls overwhelmingly on the very richest taxpayers, who have more state and local taxes to deduct because they have higher incomes and more expensive homes. As discussed above, we believe the SALT Cap should simply remain in place. However, many policymakers have expressed a commitment to restoring the SALT deduction in full for *middle-class* taxpayers—and this is one way to do so without a needless permanent giveaway to the very wealthy.
- ***Restore and permanently extend the TCJA's limit on pass-through losses (Excess Business Loss Limitation),* which was retroactively lifted in the CARES**

Act and is otherwise set to expire at the end of 2025. The TCJA implemented new limitations that reduce the extent to which taxpayers can use pass-through business losses to avoid taxes on non-business income. Under TCJA, pass-through losses can only offset up to $250,000 in non-business income for individual filers or $500,000 for married taxpayers filing jointly. This provision by nature only affects very high-income taxpayers. The CARES act retroactively repealed the passthrough loss limitation for tax years 2018, 2019, and 2020. The HEROES act would reverse the CARES Act changes, and then make the limitations permanent. We support this approach; this memo only deals with the portion of the fix that would apply after 2025.

At the same time, Congress should move to fix a core flaw in the TCJA that left millions of families out in the cold:

- ***Make the Child Tax Credit fully refundable and allow claiming by ITIN filers.*** The TCJA doubled the maximum value of the Child Tax Credit (CTC), raising it to $2,000 per child. However, parents can only claim the maximum credit if they have sufficient earnings because the credit is only partially refundable. For example, a single parent with two children must earn $30,000 per year before being eligible for the full credit. This has the perverse effect of leaving millions of our lowest-income children and families largely out of a powerful anti-poverty program. Congress should extend the full benefits of the enhanced Child Tax Credit to all children, including those whose parents have very low earnings. Additionally, the TCJA introduced a new requirement that filers may only claim the CTC for children who have a Social Security Number, cutting out previously-eligible working families, including the families of "dreamers," who claim children with an Individual Taxpayer Identification Number (ITIN).

This set of changes, again, reflects a compromise to create a simple, broadly palatable baseline TCJA repeal. This proposal would immediately repeal some of the most regressive individual provisions of TCJA, modify other provisions to shield all but the very richest households, fix a major flaw in the TCJA for low-income households, and extend two significant progressive revenue raisers. The TCJA used these revenue increases to partially pay for corporate tax cuts—progressives should keep them to pay for important priorities or increase the progressivity of the tax code.

This more robust package raises substantially more revenue in the budget window, and raises revenue on an ongoing basis rather than only for a few years. The modified SALT Cap and the limit on pass-through losses raise more than $1.2 trillion from 2026 through 2031, and continue to raise revenue afterwards.

Together, the entire individual income tax package would raise approximately $1.5 trillion over the 10 year period from 2022 through 2031.

As shown in the distributional table below, in 2022 this package would raise revenue entirely from the rich, while *reducing taxes* for 17% of taxpayers, with large reductions for some of the poorest households thanks to the CTC fix.

TABLE 3: A More Robust Individual-Side Repeal Package Raises Far More Revenue[8]

	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	10 years
Restore top three rates and brackets*	32.4	55.5	58.2	60.9	24.8	-	-	-	-	-	231.8
Phase out pass-through deduction between AGI of $250k-$350k/$200k-$250k	22.0	45.1	52.2	54.7	30.7	5.6	-	-	-	-	210.4
Phase in cap on SALT deductions for AGI of $250k-$350k/$200k-$300k and extend cap permanently	(12.1)	(21.0)	(22.4)	(23.9)	92.0	175.2	184.9	195.1	205.8	217.1	990.6
Lower AMT exemption phase outs phase out starting point to $200k/$250k	1.0	1.7	1.8	1.8	0.7	-	-	-	-	-	7.1
Restore pre-TCJA estate tax	10	10	11	11	11	3	-	-	-	-	56
Make Child Tax Credit Permanently Fully Refundable	(2.8)	(28.1)	(27.4)	(26.7)	(24.2)	(7.7)	(7.6)	(7.5)	(7.4)	(7.3)	(146.7)
Extend limit on pass-through losses	-	-	-	-	16.8	28.4	29.0	29.6	30.3	31.0	165.1
TOTAL	50.1	63.3	73.0	77.9	151.8	204.9	206.3	217.2	228.7	240.8	1,514.1

8 Note that our tables do not include the revenue or distributional impacts of restoring eligibility to immigrant children, as these figures are not currently available. The TCJA JCT score implies that requiring SSNs raised about $3.7 billion per year.

TABLE 4: Fixing the Child Tax Credit Makes Repeal Even More Progressive

Distributional Effects in 2022

Income group	Average income	Tax change (1000's)	Avg tax change	Tax change as % of income	Share of tax change	Share w/ tax cuts	Avg change for those w/tax cuts	Share w/ tax hikes	Avg change for those w/ tax hikes
Less than $10,000	**$6,000**	$ –4,537,900	$ –560	-9.3%	-8%	18%	$ –3,040	0%	$0
$10,000 to $20,000	**$15,400**	$ –7,294,800	$ –460	-3.0%	-13%	23%	$ –1,960	0%	$0
$20,000 to $30,000	**$25,000**	$ –5,894,600	$ –330	-1.3%	-10%	24%	$ –1,420	0%	$0
$30,000 to $40,000	**$35,000**	$ –2,727,700	$ –170	-0.5%	-5%	15%	$ –1,170	0%	$0
$40,000 to $50,000	**$44,800**	$ –1,781,700	$ –120	-0.3%	-3%	8%	$ –1,480	0%	$0
$50,000 to $75,000	**$61,600**	$ –1,929,000	$ –70	-0.1%	-3%	6%	$ –1,200	0%	$0
$75,000 to $100,000	**$86,600**	$ –1,325,000	$ –70	-0.1%	-2%	8%	$ –900	0%	$0
$100,000 to $200,000	**$137,800**	$ –7,478,200	$ –260	-0.2%	-13%	21%	$ –1,220	0%	$0
$200,000 to $500,000	**$287,700**	$ –2,184,300	$ –190	-0.1%	-4%	48%	$ –2,530	17%	$ + 5,950
$500,000 to $1,000,000	**$653,800**	$ + 22,787,600	$ + 11,680	1.8%	41%	13%	$ –4,950	83%	$ + 14,790
$1,000,000 and over	**$2,957,600**	$ + 71,935,900	$ + 75,910	2.6%	128%	2%	$ –5,320	97%	$ + 78,390
Total, All Taxpayers	**$99,300**	$ + 56,203,100	$ + 340	0.3%	100%	17%	$ –1,800	3%	$ + 23,670

CONGRESS SHOULD DEAL WITH OTHER EXPIRING TCJA PROVISIONS IN MORE COMPREHENSIVE PROGRESSIVE TAX REFORM, *AFTER* REPEALING TCJA'S HIGH-END TAX CUTS

The rest of TCJA's individual provisions don't expire until 2026. Realistically it will be difficult for Congress to enact a replacement tax reform dealing with core tax code provisions like the standard deduction, personal exemptions, and lower-bracket rates at the beginning of 2021, and there is no reason that these provisions need to be addressed immediately.

But that is not to say that Congress should make permanent the TCJA's tax cuts, even in modified form. We should *not* take the particular structure of the TCJA as our starting point for broader tax reform, and permanently extending TCJA's expiring provisions, even after repealing the worst giveaways to the rich, would *more than wipe out* the revenue gains from our entire proposed individual-side repeal package, including extension of the modified SALT Cap and other provisions.

Extending these expiring TCJA provisions, including the repeal of the personal exemptions, the increase in the standard deduction, changes in the tax rates, cuts to the AMT, and extension of the modified passthrough deduction, would cost almost $2.2 trillion from 2026 to 2031 alone, making the total effect of "TCJA repeal for the rich" and extension for everyone else a *revenue loss* of almost $650 billion in the ten year budget window, and much more beyond that.

TABLE 5: Extending Other Provisions That Don't Expire Until 2025 Would Cost Trillions of Dollars

	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	10 yrs
Extend temporary non-business provisions as modified (other than SALT & CTC)	-	-	-	-	(200.2)	(341.9)	(356.0)	(370.7)	(386.0)	(401.9)	(2,056.7)
Extend modified pass-through deduction	-	-	-	-	(8.4)	(16.9)	(19.1)	(19.3)	(19.6)	(19.9)	(103.3)
TOTAL	-	-	-	-	(208.6)	(358.8)	(375.1)	(390.0)	(405.6)	(421.9)	(2,160.1)

TABLE 6: Expiring Provisions Still Disproportionately Benefit the Wealthy

Income group	Average income	Tax change (1000's)	Avg tax change	Tax change as % of income	Share of tax change	Share w/ tax cuts	Avg change for those w/tax cuts	Share w/ tax hikes	Avg change for those w/ tax hikes
Less than $10,000	**$5,900**	$ –2,157,600	$ –320	-5.4%	1%	31%	$ –1,040	0%	$0
$10,000 to $20,000	**$15,500**	$ –5,127,800	$ –420	-2.7%	1%	67%	$ –630	0%	$0
$20,000 to $30,000	**$25,000**	$ –7,465,200	$ –490	-1.9%	2%	79%	$ –620	1%	$ + 300
$30,000 to $40,000	**$34,900**	$ –8,599,600	$ –590	-1.7%	2%	83%	$ –720	3%	$ + 560
$40,000 to $50,000	**$45,000**	$ –8,698,800	$ –630	-1.4%	2%	86%	$ –770	4%	$ + 830
$50,000 to $75,000	**$61,700**	$ –23,200,400	$ –840	-1.4%	7%	88%	$ –1,000	7%	$ + 630
$75,000 to $100,000	**$86,800**	$ –22,019,000	$ –1,170	-1.3%	6%	89%	$ –1,420	8%	$ + 1,180
$100,000 to $200,000	**$139,000**	$ –64,542,600	$ –1,880	-1.4%	18%	90%	$ –2,250	10%	$ + 1,450
$200,000 to $500,000	**$286,800**	$ –90,111,500	$ –5,930	-2.1%	26%	95%	$ –6,370	5%	$ + 2,090
$500,000 to $1,000,000	**$657,600**	$ –48,704,000	$ –18,490	-2.8%	14%	99%	$ –18,620	0%	$0
$1,000,000 and over	**$2,912,300**	$ –69,985,000	$ –60,410	-2.1%	20%	100%	$ –60,670	0%	$0
Total, All Taxpayers	**$114,800**	$ –352,322,900	$ –2,100	-1.8%	100%	82%	$ –2,620	5%	$ + 1,180

Doubling down on the TCJA would be a terrible use of $2.2 trillion.

Even with the most obviously regressive portions of the TCJA already repealed—as proposed above—extension of the remainder is still quite regressive. Sixty percent of the benefits of the extension package flow to taxpayers making more than $200,000 per year, and fully one fifth flows to taxpayers making more than $1 million per year. As a share of income, the largest tax cuts go to taxpayers making between $500,000 and $1 million. Meanwhile, this package would actually *increase* taxes on about 5% of tax filers, with those filers concentrated in the middle income brackets.

This is because many TCJA provisions that provide tax cuts to middle and upper-middle-income families still primarily benefit the rich. For example, restoring the 4th tax bracket to 28 percent from 24 percent would affect some families with taxable incomes around $160,000, but much higher-income tax units *also* benefit. If the new 24 percent bracket is extended, a family with taxable income $10,000 above the start of the bracket gets a four percentage point tax cut on that $10,000, or $400, from extension. The family with $3 million per year in income gets the four percentage point tax break on the more than $70,000 of their income that falls in that bracket, for more than *seven times* the tax cut. That rich family benefits from all of the rate cuts below their income.

In addition to the real negative effects of extending poorly-targeted tax cuts, there are significant opportunity costs to making permanent the other individual tax provisions of TCJA that are due to expire after 2025. While no one should be worried about the deficit for the foreseeable future, it is nonetheless likely that lawmakers will eventually face *political* tradeoffs among spending and tax priorities even if they do not face true economic tradeoffs. There may be a perception that money lost from making TCJA provisions permanent is money that cannot be spent on bold investments or changes to the tax code that will actually help empower workers and families. For example, five additional years of these provisions is more expensive than ten years of the Cost of Living Refund Act, a major expansion of the Earned Income Tax Credit ($160 billion[9] in 2020) that would lift millions of children out of poverty and provide 94 percent of its benefits to the bottom 60 percent of households. It is more than twice as expensive as ten years of the similarly progressive Working Families Tax Relief Act (WFTRA; $97 billion in 2020).[10]

If Congress decides in the future to extend some expiring TCJA tax cuts, it can offset the revenue loss with new tax increases. But in 2021, policymakers should use all of the politically feasible revenue raisers on more urgent priorities than extending tax cuts five years out.

9 Institute on Taxation and Economic Policy. 2019. "Cost-of-Living Refund Act." https://itep.org/cost-of-living-refund-act/

10 Institute on Taxation and Economic Policy. 2019. "Working Families Tax Relief Act." https://itep.org/working-families-tax-relief-act/

TCJA REPEAL MUST RAISE CORPORATE TAX RATES AND FIX OUR BROKEN INTERNATIONAL CORPORATE TAX SYSTEM

The TCJA slashed the corporate tax rate from 35 percent to 21 percent, and largely exempted the foreign income of U.S. multinational corporations from U.S. tax. This led to a collapse in corporate tax revenue even as already sky-high corporate profits continued to grow. Congress then cut corporate taxes even more this year as part of its COVID-19 response.

Boosters of the 2017 law claimed that corporate tax cuts would trickle down to workers, by spurring a boom in business investment, but in reality, the vast majority of corporate tax cuts went to wealthy shareholders as the promised investment boom failed to materialize and wages barely budged.

The fact is, corporate taxes are one of the most progressive sources of revenue available, as they fall disproportionately on the wealthiest Americans and foreign investors. And the American people understand this. Even before the enactment of the TCJA's massive giveaways to corporations, 60 to 65 percent of Americans believed that corporations paid too little in taxes.[11] In a more recent poll, the most common answer to "what bothers you most about the federal tax system" was that "corporations don't pay their fair share" with 82 percent of respondents bothered at least some and 62 percent "bothered a lot."[12]

As on the individual side of the ledger, simply repealing all of TCJA's corporate provisions is not ideal. TCJA contained a number of provisions that broadened the corporate tax base, and the international tax system that existed before TCJA was, in fact, deeply flawed. Instead, Congress should fix the deep flaws in TCJA in a way that, going forward, more than offsets the net tax cut that corporations received while making the structure of the international tax system better for U.S. workers and the U.S. economy.

We propose the following key changes:

- Replace TCJA's global intangible low-taxed income tax (GILTI) with a "per-country" minimum tax at a higher rate and with no allowance for tax-free foreign profits
- Repeal the foreign-derived intangible income deduction (FDII)
- Increase the corporate tax rate

11 Lorenzo, Aaron. 2017. "Corporate Tax Cut Unpopular with Voters, Poll Shows." Politico, September 6, 2017. https://www.politico.com/story/2017/09/06/poll-corporate-tax-cut-is-it-popular-242369; Filer, Christine. 2017. "Two-thirds Say Large Corporations Pay Two Little in Federal Taxes (POLL)." ABC News, September 26, 2017. http://abcn.ws/2wTzGMy

12 Pew Research Center. 2019. "Growing Partisan Divide Over Fairness of the Nation's Tax System." https://www.pewresearch.org/politics/2019/04/04/growing-partisan-divide-over-fairness-of-the-nations-tax-system/

These changes can raise significant revenue while also improving the incentive effects and administration of the corporate tax code. Additionally, they can work in tandem with other progressive corporate tax reform proposals to raise additional revenue.

Repeal FDII and replace GILTI

There was widespread agreement that the U.S. international tax system was highly flawed before TCJA. While multinational corporations were nominally subject to the regular 35 percent rate on their foreign profits, in reality many multinationals paid virtually nothing, mainly because they were allowed to defer tax indefinitely. By treating foreign profits more favorably through deferral, the prior system created incentives for corporations to locate jobs and investment overseas and to artificially shift their profits to tax haven countries. President Obama and others called for a minimum tax on foreign profits that would apply currently with no opportunity for deferral, and other progressives called for taxing all worldwide profits of U.S. multinationals—both foreign and domestic—the same.

TCJA exempts the offshore income of American corporations from U.S. taxes except for what the law calls GILTI, which is any portion of offshore profits exceeding ten percent of a company's offshore tangible assets—that is, TCJA taxes offshore profits after first exempting a large share. TCJA also imposes a tax rate on GILTI that is only half the rate that is paid on domestic profits. The tax on GILTI is thus, effectively, a global minimum tax, but at a very low rate and with lots of opportunity for avoidance. Moreover, this structure creates a situation where *all* types of foreign income are preferred to domestic income, as foreign tax credits for taxes paid to high-tax jurisdictions can offset the U.S. tax that would otherwise be owed on income earned in low-tax jurisdictions.

With some important changes the law could be much more effective in preventing offshore tax avoidance. These changes include taxing all offshore profits with no exemption for the return on foreign assets (which creates perverse incentives to locate physical assets overseas), taxing them at a higher rate, and either applying the minimum tax rate on a country-by-country basis or taxing them at the same rate as domestic income.[13] The deduction for foreign-derived intangible income (FDII), which also creates perverse incentives to locate physical assets overseas, should be eliminated.

Repeal of FDII will raise between $130 and $210 billion over ten years, depending

13 When a minimum tax is applied globally to all foreign income, it can have the perverse effect of making all foreign income tax preferred compared to domestic income, even when the foreign jurisdiction has a higher tax rate than the U.S. This is because the profits earned in the high-tax jurisdiction allow the company to take foreign tax credits that can then offset the minimum tax on profits earned in tax haven jurisdictions. A per-country minimum tax, on the other hand, applies the minimum tax rate to foreign income on a country-by-country basis. Taxes paid to high-tax foreign jurisdictions can offset U.S. corporate taxes on the income earned in the high-tax jurisdiction, but not the minimum tax owed on income from lower-tax jurisdictions. This is important if Congress adopts a separate, lower minimum tax for foreign profits, but unnecessary if foreign profits are taxed at the same rate as domestic profits. For more, see: Clausing, Kim. 2020. "Options for International Tax Policy After the TCJA." Center for American Progress. https://www.americanprogress.org/issues/economy/reports/2020/01/30/479956/options-international-tax-policy-tcja/

on the headline corporate tax rate.[14] The revenue gains from replacing GILTI depend on where the tax on foreign profits is set, but applying more thorough, per-country taxation will substantially increase tax revenues due to reduced profit-shifting.

Once these basic flaws have been addressed, Congress must raise the corporate tax rate on both foreign and domestic profits.

We must demand more from our corporate tax code

The reduction of the corporate tax rate from 35 percent to 21 percent was the single largest revenue loser of the TCJA. It lost more revenue than the entirety of the individual-side tax cuts. Any TCJA repeal plan must raise the corporate tax rate significantly.

Given the need to raise significantly more revenue from the corporate sector, there are strong arguments for restoring the corporate tax rate to 35 percent, its level before TCJA, and applying this rate to all income of U.S. corporations no matter where the income is booked for tax purposes. U.S. corporations were certainly globally competitive before TCJA, and taxing foreign and domestic profits at the same rate would eliminate the incentive to offshore jobs and profits.

However, the choice of the "right" top rate and rate on foreign income is at this point a highly political one. While concerns about the "competitiveness" of American companies are rooted in faulty assumptions about how income and employment growth are created,[15] and the TCJA itself has shown that cutting corporate taxes does not in fact lead to wage or job growth for American workers,[16] these talking points are nonetheless entrenched in the thinking of many American policymakers and elites.[17]

We will not attempt to settle the political debate in this memo. Instead, we will offer the information policymakers should have when making this decision.

Corporate taxes *should* be a powerful part of the federal tax system. They are extremely progressive—when corporate tax rates are cut, at least 70 percent of the benefit goes to the top 20 percent of households and fully one third goes to the top one percent. They are efficient, since they serve to limit the market power of large corporations as well as somewhat limit the accumulation of economic power in the

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14 Clausing, Kim. 2020. "Options for International Tax Policy After the TCJA." Center for American Progress. https://www.americanprogress.org/issues/economy/reports/2020/01/30/479956/options-international-tax-policy-tcja/

15 Bivens, Josh and Hunter Blair. 2017. "'Competitive' Distractions." Economic Policy Institute. https://www.epi.org/publication/competitive-distractions-cutting-corporate-tax-rates-will-not-create-jobs-or-boost-incomes-for-the-vast-majority-of-american-families/

16 Hendricks, Galen and Seth Hanlon. 2019. "The TCJA 2 Years Later: Corporations, Not Workers, Are the Big Winners." Center for American Progress. https://www.americanprogress.org/issues/economy/news/2019/12/19/478924/tcja-2-years-later-corporations-not-workers-big-winners/

17 Also, while competitiveness arguments have been vastly overstated so far, a country by country minimum tax at 35 percent could raise more legitimate worries. Thus, if 35 percent is chosen as the new corporate tax, a lower minimum tax rate may be justified.

hands of corporate managers. They are an essential tool for taxing capital income, since 70 percent of U.S. equity income goes untaxed by the U.S. government at the individual level.[18] They are also a critical backstop to the individual income tax, preventing the wealthy from holding their income in corporations and paying low or no tax in perpetuity. Yet conservative policies in the U.S. have chipped away at the corporate tax for years, finally culminating in the enormous cuts enacted in the TCJA.

The U.S. corporate tax can easily raise significantly more revenue; typical peer countries raise more revenue from the corporate tax. In recent decades, U.S. corporate profits have ballooned, yet corporate taxes have fallen steadily since the 1950s, and are now at historic lows as a share of GDP. The U.S. government only raises about 1 percent of GDP from corporate profits taxes, whereas peer OECD countries raise 3 percent. In 2019, simply raising corporate taxes in line with the average for the OECD would have netted the U.S. more than $400 billion in additional revenue each year.

The COVID-19 recession is driving drastic reductions in revenue this year, as corporate profits have cratered due to the economic effects of the pandemic. However, a recurring theme in past recessions is that while profits fall farther and harder than typical workers' wages in the recession itself, they recover rapidly and post gains that far outpace wage growth for years after the end of the recession. This historic dynamic is why the stock market has rebounded so quickly in recent months, even as current profits remain low. When the rapid rebound in corporate profits predicted by historical experience comes, these profits should be taxed at a fair rate.

It is also important to note that the corporate income tax, by definition, is only paid by companies earning profits. Companies experiencing hardship or losses due to the recession do not pay *any* corporate tax, and they may even generate tax losses that reduce tax payments in future years, after they return to profitability. Thus, since the corporate tax is so counter-cyclical, it is a safe tax to raise during recessions.

Yet, the truth is that many corporations—and their shareholders—are going to see enormous windfall profits while the rest of the economy craters. Some have called for targeted excess profits taxes, but the first step should simply be immediate, robust corporate taxation. Not only do corporate taxes almost exclusively fall on the wealthy, they are exclusively paid by *profitable* corporations. Many of these corporations are also advocating for and receiving unprecedented government bailouts. Those that thrive should be required to contribute more.

Increases to the corporate tax rate can dramatically increase the revenue raising power of the code.

The Congressional Budget Office estimates that a one percentage point increase

18 Burman, Leonard E., Kimberly A. Clausing, and Lydia Austin. 2017. "Is U.S. Corporate Income Double-Taxed?" National Tax Journal. https://www.ntanet.org/NTJ/70/3/ntj-v70n03p675-706.html

in the overall corporate tax rate raises about $100 billion over ten years.[19] Recent estimates from Kimberly Clausing[20] give an idea of the revenue potential of different per-country minimum taxes. Below are approximate ten-year revenue estimates for illustrative policy combinations.

Table 7: International Reforms and Corporate Rate Increases Can Raise Significant Revenue

(All numbers in billions of dollars)

	Minimum tax change (including GILTI repeal)	Increase headline rate	Repeal FDII	Total revenue over 10 years
35% worldwide corporate tax (on both foreign and domestic profits)	$1,160	$1,400	$220	$2,800
35% top rate with 28% minimum tax on foreign profits	$790	$1,400	$220	$2,400
28% worldwide corporate tax rate	$790	$700	$180	$1,700
28% top rate with 21% minimum tax on foreign profits	$450	$700	$180	$1,300

Note that even all of the corporate tax reforms highlighted above, including a 35 percent *worldwide* rate, do not raise enough revenue to get to the 3 percent of GDP that our peer countries raise through corporate taxes, despite the disproportionate size, influence and profitability of American corporations. There are many other worthy reforms to corporate and business taxation that policymakers should consider.

19 Congressional Budget Office. 2018. "Options for Reducing the Deficit: 2019 - 2028, Increase the Corporate Income Tax Rate by 1 Percentage Point." https://www.cbo.gov/budget-options/2018/54810

20 This table uses the figures for the IRS Country-by-Country full sample and inflates all figures by 4% to adjust them to the 2022-2031 budget window. Clausing, Kim. 2020. "Options for International Tax Policy After the TCJA." Center for American Progress. https://www.americanprogress.org/issues/economy/reports/2020/01/30/479956/options-international-tax-policy-tcja/

Dismantling TCJA is only one step in a progressive tax agenda

The above is not at all meant to represent a comprehensive progressive tax plan. It is designed to ensure that when Congress gets the opportunity to repeal the TCJA, the public and policymakers are not left wondering what that means and how to do it. And it is intended to help us all avoid some hidden traps. If there is a broader chance to make changes to the tax code, progressives should at a minimum push for these critical priorities:

- Expand major tax credits for people of modest means, including the CTC and the EITC for families and, crucially, childless workers, who were left behind in the TCJA
- Fix individual capital taxation—too many wealthy Americans are able to accumulate vast fortunes, and the power that comes with them, without paying anything like their fair share in taxes. From relatively small but consequential tweaks to estate and income tax rules, to farther-reaching reforms that tax wealth like work, or apply a wealth tax, there are many ways to improve this area of taxation, and they should be pursued aggressively
- Raise more revenue across the board from high-income individuals and corporations

There are a number of progressive tax plans and proposals that address these issues, and the authors of this memo support a comprehensive reconsideration of the tax code with these goals in mind. We hope that this memo will provide a baseline for how policymakers can fulfill their promise to repeal the TCJA at the first opportunity, not a replacement for more fundamental changes.

APPENDIX: OTHER TCJA PROVISIONS NOT DISCUSSED EXPLICITLY

Below is a list of other tax provisions that the TCJA altered that may be of interest to policymakers, with our view on how they should be handled

Provision	Discussion	Immediate Action
Standard deduction and personal exemption	The TCJA doubled the standard deduction and eliminated the personal exemption. These provisions combined had significant revenue and distributional effects, cutting taxes for some while raising taxes on others. We leave them untouched here and suggest that they be considered as part of a more comprehensive reform of the tax code at a later date.	Leave as is, including expiration
Limitation on itemized deductions (Pease)	Repealed by TCJA. Was a limit on the value of all itemized deductions to high-income households. Progressive revenue-raiser.	Restore
529 accounts	TCJA allowed the use of tax-preferenced 529 funds for private K-12 education, undermining public education. This change does not expire.	Repeal change
Union dues deduction	TCJA punished union employees by denying deductibility of union dues. The union dues deduction was already flawed, as it was allowed only as an "unreimbursed employee business expense" which dramatically limited its value. The TCJA change expires in 2025.	Replace with an above-the-line deduction so that all employees can get the full benefit of the deduction[21]

21 Thornton, Alexandra. 2019. "Why All Workers Should Be Able To Deduct Union Dues." Center for American Progress. https://www.americanprogress.org/issues/economy/reports/2019/12/19/478894/workers-able-deduct-union-dues/

Provision	Discussion	Immediate Action
Mortgage interest deduction	TCJA reduced the MID loan limit from $1 million to $750,000 and limited deductibility of home equity loans to balances attributable to acquisition or home improvement. This change expires in 2025.	Leave in place
Capital gains brackets	TCJA altered the income thresholds for the capital gains tax rate brackets such that they no longer align with the ordinary income tax brackets.	Consider more aggressive changes to capital taxation that would do away with special rates
Chained CPI	The TCJA raised some revenue by indexing various provisions of the tax code to a less-generous measure of inflation. This provision does not expire.	Leave in place. However, the switch to the Chained CPI increases the importance of expanding the EITC.
Deductions for bicycle commuting and moving expenses	TCJA repealed these deductions	Restore
Roth conversion recharacterizations	TCJA repealed special rules that allowed Roth IRA conversions to be undone after the fact	Leave in place