

**INDUSTRY
INSIGHTS**

WEBINAR

**Sept. 12th, 2024
11:00 AM EST**



How the Energy Industry Should Prepare for the 2025 Tax Policy Armageddon

Presented by BakerHostetler

BakerHostetler

Tax Policy and Permitting Reform

2025: Energy industry's risks and opportunities

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Former Republican Congressman Peter Roskam leads BakerHostetler's Federal Policy team, which provides clients with government affairs and lobbying services. Peter was chairman of the Ways and Means Tax Policy Subcommittee during enactment of the Tax Cuts and Jobs Act in 2017. Peter helped write that massive tax reform law – and he knows firsthand how the different pieces came together and the policy and political trade-offs required to enact TCJA into law.

That insider's perspective from a lawmaker who was in the room in 2017 is invaluable today as stakeholders seek to understand how Congress will address the 2025 twin forcing actions of trillions of dollars of expiring taxes and the need to raise the \$34 trillion debt ceiling to prevent the government from defaulting.

One thing is clear...there will be winners and losers.



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The Independent Petroleum Association of America recognized Poe Leggett for “25 Years of Outstanding Legal Representation,” having saved independent oil and gas producers \$25 billion in costs from excessive regulation.

Poe leads BakerHostetler’s Energy Industry team, which was recently named Practice Group of the Year by Law360. Poe focuses his practice on litigation and transactional work in the energy industry, including onshore shale plays, federal and private mineral royalties, oil and gas companies operating on federal and Indian lands, and companies operating under federal leases in the Gulf of Mexico.

Poe previously served as assistant solicitor for the U.S. Interior Department, advising the Bureau of Land Management and the Minerals Management Service on their onshore and offshore energy programs, as well as MMS's Royalty Management Program on questions of royalty valuation.

What's at stake

The 2025 sunset of key tax provisions of the Trump-era Tax Cuts and Jobs Act and of the Biden-era Inflation Reduction Act is triggering the most intense lobbying efforts on Capitol Hill in generations.

Hanging in the balance: Energy companies and their investors weighing billion-dollar business decisions around future capital expenditures.



TCJA: Expiring business tax provisions

Foreign Derived Tangible Income Global Intangible Low-taxed Income

- ▶ Current 50% deduction reduced for foreign-derived intangible income and global intangible low-taxed income
- ▶ New effective federal tax rates: 16.406% on FDII and 13.125% on GILTI

Base erosion/anti-abuse tax

- ▶ Rate on modified taxable income increases to 12.5%
- ▶ Credits will not reduce BEAT liability

Bonus depreciation

- ▶ Added first-year depreciation of qualified property fully phased out in 2026

Controlled foreign corporation look-through treatment

- ▶ Expiration of look-through treatment of payments between related controlled foreign corporations and under foreign personal holding company rules

199A deduction

- ▶ Pass-through income taxed at ordinary individual rates without deduction for qualified business income

TCJA: Expiring individual tax provisions

Individual marginal tax rates

- ▶ Each individual tax bracket resets to pre-TCJA marginal rates
- ▶ Top rate: 39.6% on income >\$418,400

Standard deduction

- ▶ Standard deduction for married filing jointly reduced from \$24,000 to \$13,000

Estate, gift tax exemptions

- ▶ Exemption for estate tax falls from ~\$14 million to ~\$7 million
- ▶ Exemptions for gift and generation-skipping transfer taxes reduced by half

Alternative minimum tax

- ▶ Elimination of higher exemption and phaseout will result in more taxpayers subject to AMT

Itemized deductions

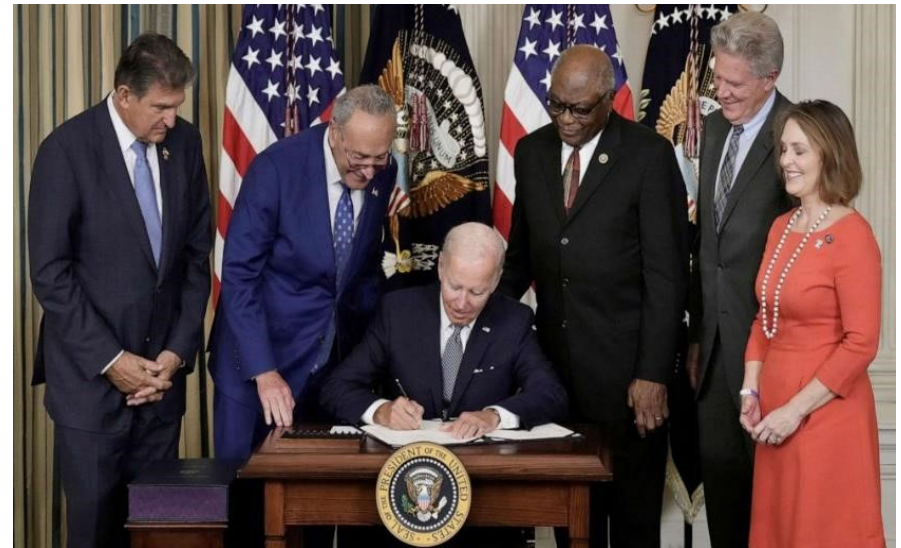
- ▶ Pre-TCJA AGI thresholds and caps for itemized deductions return

Child tax credit

- ▶ Maximum per-child credit drops from \$2,000 to \$1,000
- ▶ Phaseout of income threshold drops from \$400,000 for couples to \$110,000

Inflation Reduction Act

- ▶ IRA enacted or changed 21 energy tax provisions, including:
 - ▶ Carbon capture and storage
 - ▶ Energy-efficient building modifications
 - ▶ Clean electricity generation
 - ▶ Electric vehicles
- ▶ IRA energy tax credits and deductions cost \$271 billion over 10 years.



Inflation Reduction Act

- ▶ Congressional Republicans mostly opposed IRA for its climate implications and effect on energy industry, jobs.
- ▶ Today GOP lawmakers view IRA's tax provisions as a piggy bank to pay for renewing and expanding TCJA.



IPAA Tax Priorities

- ▶ Intangible drilling cost expensing
 - ▶ \$9.7 billion over 10 years
- ▶ Percentage depletion
 - ▶ \$15.6 billion over 10 years
- ▶ Passive loss exception
 - ▶ \$74 million over 10 years

These provisions are permanent in law but targeted for repeal by Biden-Harris FY25 budget and some congressional Democrats.



‘Every Tax Provision Is On The Table’

POLITICO

May 8, 2024

House Ways and Means Committee Chairman Jason Smith said prominent **Republican lawmakers** told him corporate tax rates should be increased.

“There are people on both sides of the aisle who believe the corporate tax rate is not [high] enough If you think the C corp is not on the table for discussion [in 2025] – **every tax provision is on the table**. Nothing is permanent.”

*Chairman Jason Smith on May 8, 2024,
at BakerHostetler’s 35th annual Legislative Seminar*



House Ways and Means Committee Chairman Jason Smith, R-Mo., speaking during BakerHostetler’s 35th annual Legislative Seminar on May 8, 2024, in Washington.

2025: Perfect storm

While Washington is seized by gridlock, Congress can't avoid acting in 2025 on the perfect fiscal storm.

Expiring tax provisions and need to raise debt ceiling creates forcing mechanism compelling Congress to act.



Drowning in Debt

- ▶ Debt pressure defining coming tax debate in Congress.
- ▶ National debt exploding:
 - ▶ \$20 trillion in 2017
 - ▶ \$35 trillion in 2024
 - ▶ Today, government borrows \$80,000 every second
- ▶ Congress must vote in 2025 to raise the debt ceiling and authorize new borrowing authority.

“U.S. Debt on Pace to Top \$56 Trillion Over Next 10 Years”

The New York Times
June 18, 2024

Engaging Washington

“If you don’t have a seat at the table, you’re probably on the menu.”

*Sen. Elizabeth Warren
Democrat, Massachusetts*



Engaging Washington

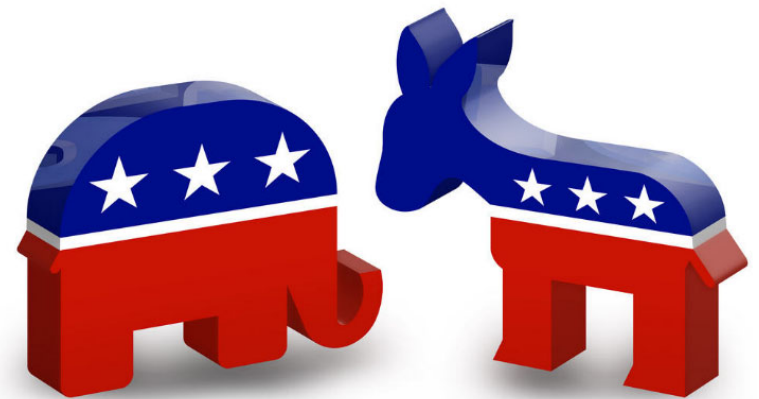
- ▶ Who in Congress has most influence?
- ▶ Under Constitution, tax matters must originate in House:
 - ▶ Ways and Means Committee has exclusive jurisdiction in House
 - ▶ Finance Committee is tax-writing committee in Senate
- ▶ House Energy and Commerce Committee and Senate Energy and Natural Resources Committee can be influential over energy tax policies.



Elections' impact on 2025 tax debate

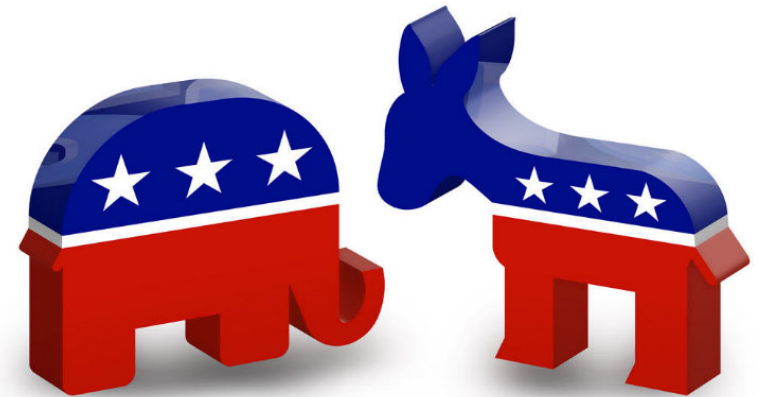
Different tax outcomes in 2025 dependent on 2024 election results for White House, Congress

- ▶ If Democrats sweep, likelihood of higher taxes on businesses and higher-income earners.
- ▶ Fewer moderate lawmakers to act as restraining force against policy excess.
- ▶ Democratic Senators Joe Manchin and Kyrsten Sinema are not seeking reelection.



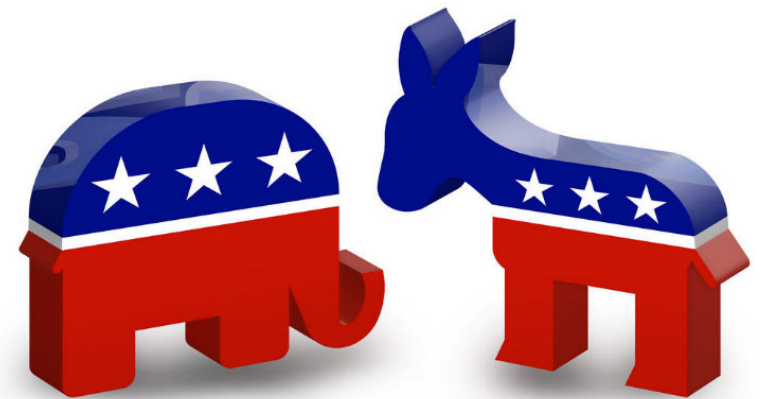
Elections' impact on 2025 tax debate

- ▶ If Republicans sweep, many TCJA provisions likely would be renewed.
- ▶ But traditional GOP support ebbing for lower taxes and business-friendly policies.
- ▶ Populist GOP lawmakers open to higher taxes on corporations, high-income earners.
- ▶ IRA tax credits would be at risk for repeal or modification.



Elections' impact on 2025 tax debate

- ▶ Under divided government, each tax provision would be fought over like trench warfare.
- ▶ Final product would necessarily be bipartisan.
- ▶ With horseshoe theory of politics, far right and far left in Congress could merge into coalition and back tax policies adverse to businesses, including energy industry.



What you should do – now

With \$5 trillion of expiring tax provisions plus need to raise debt ceiling, government will be thirsty for revenue: Don't be a pay-for!

Connect the dots for lawmakers: Demonstrate how favored tax provisions translate to economic growth and job creation in their states and districts.

Underscore the risk of adverse tax policies not only harming companies but also burdening lawmakers' constituents.

Don't limit lobbying to lawmakers on tax-writing committees; with narrow margins in House and Senate, individual lawmakers wield outsized influence.

Legislative champions need to be pre-positioned in House and Senate.

What you should do – now

Most important takeaway: Don't wait.

Waiting until after the November elections to model lobbying strategies for Congress in 2025 would be a profound mistake.

Lobbyists and corporate executives have already been on Capitol Hill for months, developing key relationships and socializing policy proposals.

If you're not engaging now, you risk not being able to shape favorable policy outcomes – or blocking adverse tax provisions from becoming law.

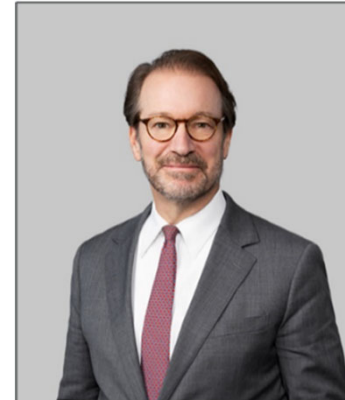
Do. Not. Wait.

BakerHostetler's Federal Policy team

The Federal Policy team includes two former members of Congress – one Republican, one Democrat – and senior congressional staff.

We provide government affairs, public policy and lobbying services to businesses of all sizes, from Fortune 10 companies to startups.

Clients turn to us because of our solid record of accomplishment lobbying to shape favorable policy outcomes on Capitol Hill, in the White House and in executive branch departments.



Former Republican Congressman Peter Roskam leads the Federal Policy team.



Former Democratic Congressman Heath Shuler is a senior advisor on the Federal Policy team.

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Thank you for attending
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