



The Daily Dish

A Treasury Turkey

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Eakinomics: A Treasury Turkey

Largely due to the good efforts of Schoolhouse Rock, I used to understand how a tax idea became the law of the land. The ideas get embodied in legislation, which passes the House of Representatives and the Senate. If there are differences, representatives of each body meet in a conference and settle on a common legislative text. After passing both the House and Senate, the bill is sent to the president for his or her signature. To support this congressional effort, there is [scoring](#) to allow Congress to hit the desired budgetary impact and a conference report that summarizes the policy intent of the legislators in passing the bill. Through this process, Congress seeks to hit the right combination of policy intent and budget impact.

After the president signs the bill, the Treasury Department is tasked with writing rules (regulations) needed to implement the new law. In doing so, it is aided by knowing the policy intent of Congress from the conference report (and also any floor debate, hearings, etc. during the process of passage) and by having the Office of Information and Regulatory Affairs gauge the burden imposed on the public sector. Its job is to hit the policy intent of Congress at the lowest possible regulatory burden.

So I am terribly confused by the process surrounding the Tax Cuts and Jobs Act (TCJA). Congress indeed passed the TCJA using the Schoolhouse Rock formula. Treasury has now turned to writing the rules that will guide the implementation of the TCJA, especially the important new international provisions with spiffy names such as BEAT (Base Erosion and Anti-Abuse Tax), GILTI (Global Intangible Lightly Taxed Income) tax, and FDII (Foreign Derived Intangible Income). [According](#) to a Treasury official, however, “Treasury is extremely sensitive to the fact that expense allocation will have a significant impact on taxpayers, but also noted that the tax on global intangible low-taxed income was included in the TCJA as a form of global minimum tax. He said it is expected to raise over \$100 billion of revenue. A large portion of that revenue is expected to be generated as a result of expense allocation rules, he added.” That is, the rule should be written to raise \$100 billion.

What?!

There is no “scoring” of regulations. Never has been and never should be (see above). Congress has already decided the appropriate budgetary impact; the job of the Treasury is to write rules [consistent with the policy intent](#), worrying only about the cost of complying with the regulations. To reach in after the fact and massage the budget impact or “score” of the law itself is simply an executive intrusion into the role of Congress.

Moreover, there is no real way to assign “a” score to a rule or regulation, just as there is no single Joint Committee on Taxation (JCT) score on any single provision. The provisions interact with one another, and the budgetary impact would depend on the order in which the single provisions were considered. That is why the bill as a whole is scored and its bottom line assessed. IF the Treasury were to “score” regulations, it could only assess the overall set of regulations that were needed to implement the TCJA. Anything else has no real meaning.

Finally, “scoring” is always done relative to a baseline. A score is literally how the law changes the baseline estimates of revenues coming into the Treasury and spending going out. What is the “baseline” for a “score” of a regulation implementing a law that did not exist before? The whole notion is a deep step into a fantasy-world black box.

This seems like a Treasury turkey. But perhaps I’m just confused. If so, it would be very helpful for the Treasury to eliminate the black box mystery and explain exactly what it is doing as it writes the rules to implement the TCJA.