interest, dividends, and capital gains, which resulted in more than $1 million in additional taxes.

"Let's be honest, the only reason the IRS assessed the $21 million [in] penalties at issue in this case was because our client quietly came into compliance," Neiman's email says. "That was wrong. All cases should be decided on the facts and circumstances. Case selection matters and this case should never have been brought."

The defendant in *United States v. Gaynor*, No. 21-cv-00382, was represented by Neiman and Vollrath of Marcus, Neiman, Rashbaum & Pineiro LLC; Durney of the Law Offices of Michael C. Durney; and Akerman LLP. The government was represented by Conor P. Desmond, Steven M. Chasin, and Samuel G. Fuller of the Justice Department Tax Division. ■

Top Tax Watchers Wishing for Divided Government for 2025 Showdown

by Doug Sword

The Big Four's national tax luminaries see a wide range of scenarios playing out in 2025 in every area of tax law — individual, corporate, and international — making for a tumultuous, unpredictable landmark of a year.

Everything in the Tax Cuts and Jobs Act will be on the table in Congress: from corporate income tax rates, individual tax brackets, and the eternal question of what to do about the state and local tax deduction limitation, to how much of the extensions will be paid for and whether to break a jarringly expensive package into smaller time frames than the typical 10-year cost-scoring window.

"If they wanted to make everything permanent, that would add another $4.5 trillion to the national debt over the ensuing decade," PwC's Rohit Kumar said during a February 14 webcast teasing the Tax Council Policy Institute's May 16-17 event, titled "The Gathering Storm: 2025 and the Coming Tax and Fiscal Showdown."

Most TCJA-cliff followers are familiar with the $3.5 trillion cost of keeping the individual income tax rate cuts across the income brackets, of extending cuts for recipients of passthrough income, and of renewing cuts for estate taxes in place past their December 31, 2025, expiration, Kumar said.

"I think the size of the corporate piece is not well understood," Kumar said, noting that expiring corporate tax breaks would account for about 25 percent of the cost of extending the TCJA. Only then — probably after the "knife fighting" over the individual tax provisions is done and the domestic corporate side settled — will negotiators truly turn to the much smaller dollar values involved in pillar 2 and international taxation, he added.

The size of the hit to the deficit will be daunting, and having to raise other taxes to pay for those continued cuts will likely be avoided, according to Jennifer Acuna of KPMG LLP.

"It's hard to see a scenario, in either case — whether you're talking about Democrats or Republicans — where a portion of these extenders are not unpaid for," Acuna said. She suggested that Congress might parse the extension into smaller, more palatable time periods than the traditional longer budget windows set in law.

"When you have this $4.5 trillion, that's over a 10-year horizon. They could try to do this incrementally, maybe have a shorter-term horizon," Acuna said.

After all, the TCJA came in as costing $1.5 trillion — later revised to $1.6 trillion — over eight years. And the Bush tax cuts from the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Jobs and Growth Tax Relief Reconciliation Act of 2003 were first extended in 2010 for just two years — at an estimated cost of $858 billion — before a broader deal was reached in the $3.9 trillion American Taxpayer Relief Act of 2012.

Divided Is Good

Both Kumar, who worked for Sen. Mitch McConnell, R-Ky., in 2012, and Anna Taylor of Deloitte, who worked for Sen. Charles E. Schumer, D-N.Y., during that time, suggested that, as was the case then, divided government might provide the best chance of a longer-term extension.

Taylor likened what could play out in 2025 to what did play out in 2012, when a divided government with a Democrat in the White House faced a similar challenge as the two-year patch extending the Bush tax cuts was sunsetting.

"When you see that many taxpayers facing a tax increase, they all wanted to figure out a solution," Taylor said of members of Congress. "I do think that, for better or for worse, at the end of '25 you're setting up for a similar situation, where if they can't figure out how to work together, there are going to be a lot of tax increases on the horizon, and nobody wants that."

"A divided government scenario is the one that could lead to the best outcome," Taylor added.

Under a Biden White House, the first $2.5 trillion of the $4.5 trillion would be immediately off the board because of Biden's pledge not to raise taxes on households making less than $400,000 a year, Kumar noted.

So the negotiation would focus on the space between "that and the rest," Kumar said of the $2 trillion difference.

"But yeah, divided government actually may give us our best chance of getting a durable, permanent solution," Kumar said. If either party controls all the levers of government, the solutions are more likely to be short term: If Republicans write another reconciliation bill, it will likely be another temporary seven- or eight-year time frame; if Democrats are the authors, the scale of the costs would make them want to find some way to pay for such a huge package, he opined.

Another area in which bipartisan cooperation could come into play is what happens to the $10,000 SALT cap once it expires at the end of 2025, since the cap's continuation would be an enticing pay-for for extending tax cuts. A large majority of Democrats have pushed for SALT cap relief, while a Republican effort to raise the cap fell short on a February 14 House floor vote. But returning to no cap isn't an acceptable outcome to many members, Taylor said.

"It's not an easy issue, I think, for either party to thread the needle on, so I'm not quite sure how it will turn out," Taylor said. "I don't think that current law is probably acceptable for a large number of members on both sides of the aisle; I don't think that return to pre-cap in 2026 is also an acceptable outcome for many members. So there's got to be some sort of compromise in the middle."

Taylor agreed that it's unlikely that Democrats would want to repeal all of the TCJA, although they would want to concentrate on how those earning less than $400,000 are affected, and there will be an interest in revisiting the section 199A qualified business income provisions.

"I think that you will see some asking, 'Is 199A working as it should? Who is benefiting the most from it? Do we need to refine it, tinker with it?'" Taylor said.

What to Do With Pillar 2

Another focus for Democrats in 2025 will be pillar 2 compliance. There was an interest among Democrats in inserting pillar 2 provisions in the Inflation Reduction Act and Build Back Better reconciliation bills in the last Congress, but they held off out of fear of getting out ahead of the rest of the world, Taylor said.

"Now the rest of the world is acting, and so I think you will see a number of them saying that pillar 2 compliance should be a priority in a package in '25," Taylor said.

The rest of the world is certainly acting on pillar 2, EY's Barbara M. Angus agreed.

"We woke up on January 1 of this year to find 25 countries had pillar 2 rules in place," Angus said. "That was in contrast to about three having them in place just two weeks before."

However, this "complete transformation of the global landscape" has not been done identically by each country, creating a level of complexity that will require refinements and solutions to unintended consequences that arise, Angus said.

"There may be a silver lining in all that complexity: It seems to be a completely fortuitous alignment of timing" with expected congressional tax action in 2025, Angus said. ■