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Senate passes bill to modify 2017 “kiddie tax” changes

The U.S. Senate on May 21, 2019, passed by unanimous consent a bill to amend the Internal Revenue Code to treat certain military survivor benefits received by a child as earned income for purposes of the so-called “kiddie tax” of Code section 1(g).

Read [S. 1370](#), the “Gold Star Family Tax Relief Act”

The bill would apply retroactively to tax years beginning after December 31, 2017. The Joint Committee on Taxation (JCT) has not yet released a revenue estimate for the Senate bill.

Background

Prior to the enactment of the 2017 tax legislation commonly called the “Tax Cuts and Jobs Act” (Pub. L. No. 115-97), the net unearned income of a child generally was taxed under section 1(g) at the higher of the parent’s tax rate or the child’s tax rate.

The 2017 law simplified how the “kiddie tax” is calculated by effectively applying the ordinary and capital gains rates applicable to trusts and estates to the child’s net unearned income. The computational changes to the kiddie tax are reflected in new Code section 1(j)(4).

Like most of the changes to the taxation of individuals made by the 2017 Act, new section 1(j)(4) applies temporarily to tax years beginning after December 31, 2017, and before January 1, 2026.

KPMG observation

In the last few months, concerns have been raised about taxing military survivor benefits received by children at trust rates that can be as high as 37 percent. The Senate bill would address these concerns by amending section 1(g) to treat those benefits as earned income (rather than unearned income), retroactive to the effective date of the 2017 law’s kiddie tax changes.

The House may consider a tax bill (H.R. 1994, the “Setting Every Community Up for Retirement Enhancement Act”) as early as this week that would address not only concerns about the kiddie tax treatment of military survivor benefits, but also other (broader) concerns about new section 1(j)(4). Under a “manager’s amendment” to H.R. 1994 as previously reported by the Committee on Ways and Means, section 1(j)(4) simply would be repealed so that unearned income of children would not be

taxed at trust rates. This change generally would be effective for tax years beginning after December 31, 2018, but a taxpayer could elect to apply it retroactively to tax years beginning after December 31, 2017. Read the [manager's amendment](#).

S. 1370 is the first bill to change a provision in the 2017 tax law that has passed either chamber in this Congress. It reflects broad and deep support from both Republicans and Democrats for resolving the treatment of certain unearned income of children expeditiously. Indeed, S. 1370 was able to move through the Senate quickly without amendment because all 100 Senators agreed to move it in this manner. Typically, it can be very difficult to secure unanimous consent to move a "single issue" tax bill through the Senate without amendment.

Note also that neither S. 1370 nor the House manager's amendment refers to the proposed changes to the kiddie tax rules as "technical corrections" to the 2017 tax law. Instead, both appear to be substantive changes to current law. As a result, the JCT's estimates of both measures, once available, might reflect revenue losses.

For a discussion of the differences between policy changes and technical corrections and the possible prospects for technical corrections legislation, read [TaxNewsFlash](#).

What's next?

The Senate has ordered, by unanimous consent, for S. 1370 to be "held at desk." Thus, the bill has not been transmitted to the House. Indeed, under the U.S. Constitution, revenue measures must originate in the House.

As indicated above, the House may consider retirement legislation as soon as this week that simply repeals new section 1(j)(4).

Ultimately, both the House and Senate must pass identical legislation, and the president must sign such legislation, for the legislation to become law.

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