

Abstract

Tax Expenditure Framework Legislation

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Tax expenditures have been closely analyzed in the United States for over 30 years, but to date the U.S. Congress has failed to incorporate tax expenditure analysis in any meaningful way into its budget decisions. Explicit federal outlays are developed through an elaborate budget-setting process, but tax expenditures fall outside established Congressional budget constraints. As a result, the preparation of the annual federal Budget privileges tax subsidies, even though they function like outlays in most substantive senses. The result is a system in which tax subsidies have become the preferred vehicle for delivering many new spending programs – even fixed-dollar appropriation-equivalent programs – in cases where the tax system offers no particular advantage as the delivery mechanism.

This paper inquires into how tax expenditure analysis fits into existing budget framework legislation, how existing processes privilege this form of government spending over explicit spending programs, and how budget framework legislation can be revised to account more neutrally for tax expenditures. The paper argues that the recent work of the Staff of the Joint Committee on Taxation to redefine tax expenditures in a more objective fashion, in particular with respect to the subset that the JCT Staff terms “tax subsidies,” has satisfied a critical precondition to bringing tax expenditures more effectively within budget framework legislation.

The paper suggests that every tax subsidy can be placed into one of three categories for purposes of developing tax framework rules of application. Some tax subsidies (e.g., the low-income housing tax credit, or many energy incentives) constitute fixed-dollar allocations: they operate as direct competitors to classic discretionary spending appropriations. Others are open-ended in dollar terms, but offered for a fixed term. Tax expenditures in the third category are both open-ended in dollar terms and indefinite in term. The paper concludes by sketching some possible procedural rules for each category, in light of each one’s substitutability with spending programs subject to existing framework processes.