



## Podcast Transcript

# The Cloakroom with Peter Roskam: 37th Annual Legislative Seminar – Assistant Secretary of the Treasury for Tax Policy Kenneth Kies

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Lee: Welcome to “The Cloakroom with Peter Roskam.” Former Congressman Peter Roskam leads BakerHostetler’s Federal Policy team. Through interviews with leading members of Congress, Peter provides an insightful, firsthand view into the latest policy and political debates on Capitol Hill.

In today’s episode, Peter is joined at the 37<sup>th</sup> Annual Legislative Seminar in Washington by his BakerHostetler colleague, former Congressman Heath Shuler, and Assistant Secretary of the Treasury for Tax Policy Kenneth Kies. Kies is a former BakerHostetler tax partner and also served as chair of the firm’s Tax Practice Group. At the Treasury Department, Kies is responsible for developing, recommending and implementing federal tax policy. He has also held leading tax

policy roles on Capitol Hill at the Joint Committee on Taxation and the Ways and Means Committee.

Peter, Heath and Assistant Secretary Ken Kies discussed the Trump administration's efforts to implement the 2025 tax reform law.

Let's listen in to "The Cloakroom with Peter Roskam."

Roskam: Ken, you're meeting yourself coming and going these days with a lot to say grace over. And thank you for accepting our invitation. And three things come to mind. One, when I reached out to you and I said, would you be willing to come? At Jeff Paravano's suggestion, you said, I'd be happy to, period, Ken. Lovely message. I was delighted to receive it. So, thank you for that.

Secondly, I was, when I first got on the Ways and Means Committee, the word was, Ken Kies is one of these people that you should talk to. And I remember you coming into my office, you were on the outside advocating on behalf of clients, and you came in and over the years, I know you mentored me and you've mentored a lot of other people breaking down very complicated tax issues and explaining it in a way that was an invitation to learn more about it. And it wasn't a condescension, but you came in and it was a tutorial about, hey fella, here is the types of things you need to know. And you weren't pitching on behalf of a client, you were tutoring and mentoring. And I know that I was the beneficiary of that and I just want to publicly honor you and say thank you for that. I really benefited from that.

And three, you're a Baker tax partner and you know that we're a firm that is led by tax lawyers. And so, there was a lot of interest in you coming today. So, no joke. Thank you for coming. I know that you got a lot going on.

So, you've been in the trenches, as I just described, over the years in terms of tax policy. You've seen them come. You've seen them go. What is your sense on these big episodic swings where, is the future of tax policy basically big reconciliation vehicles where one side has to run up the score, gain total control? TCJA, IRA, Big Beautiful Bill. Is that what the future looks like? Or will we go back to a day that is different than that? What do you think?

Kies: Well, thanks, Peter. And actually, before I was a partner at Baker & Hostetler, I was an associate, which is actually a much more educational experience, along with Hewitt Shaw, who is sitting right back there. So, the future of tax policy is partly a function of what has substantively happened to the tax code.

Roskam: Maybe hold that closer.

Kies: ...what has substantively happened to the tax code over the past 40 or 50 years. And there is a couple seminal decisions that were made, some on a bipartisan basis. Maybe the most important change in the internal revenue code since its original creation was the '81 Act, which indexed marginal rates for inflation, because what that did was take away what was an unlegislated tax increase that

occurred every year because people got pushed into higher brackets even though the real income was not going up. And if you go back prior to the '81 Act, every major tax bill was actually a tax cut, and the reason was that they had loads of money to give out because of inflation driving in more revenues.

After the 81 Act which indexed marginal rate brackets standard deduction et cetera, the next tax bill that was actually a net tax cut was not until 1997 which most people didn't even realize the time and certainly don't realize today. I would also note one more thing about the '97 Act which I'm looking around the room some of the people are young enough not to even recall this happened, the '97 Act was a budget and a tax bill and it balanced the budget earlier than expected we ran a surplus by '98, '99, by 2001 we had paid off half a trillion of debt. Paid off half a trillion of debt. Most people don't actually realize we ever paid off any debt. In fact Alan Greenspan in January 1, 2001, the 10-year projected surplus of the federal government was 5.6 trillion dollars.

Roskam: Wow.

Kies: Alan Greenspan was wringing his hands which he tended to do anyway, but was wringing his hands over what we were going to do when in about seven years we paid off all the federal debt what would we do with the money because he didn't want us investing in the equity markets. Well, let me just say we solved that problem. Okay? No problem, Alan. But if you look at major policy decisions, probably the '74 budget act to create CBO, joint committee of course was created way back in the 20s. But the fact that up until around, I don't know, '80, maybe '76, revenue tables, you guys will find this hard to believe, revenue tables on tax bills were not put together until after the bill was enacted.

Now today, the first thing every member of Congress who is on the Ways and Means Committee or the Finance Committee, the first thing they want to know is what does it cost? And so, the joint committee's role is very different from what it was when revenue tables weren't put together until after the tax bill was enacted. Today, they play a seminal role. And there is one other aspect of the whole tax legislative process that has not changed and is equally important and many people don't even know about. How many people here know where the Office of House Legislative Counsel is? No one. Okay, two. It is in Cannon. Canon House Office Building, first floor. How many know what is the Office of House Legislative Counsel? Okay, Paul does. So let me just give you a quick history because they draft all the tax legislation. They draft all the legislation for the Congress. They have experts on all the issues. Nobody lobbies them. Most lobbyists don't know they exist.

Now, how did they end up there? In the teens, as in 19-teens, clarify that now, the way Congress worked is they worked under much more gentlemanly timetables. They would meet, maybe knock off around four, make a few decisions. Some clerk would write it up, and then they would hand it to somebody who had gotten on a train and go to Princeton, New Jersey, where the legislative drafting school was. The people in Princeton would draft up the legislation, which, of course, would take days. They'd get back on the train. They'd bring it

back to Washington and hand it over to either the committees of jurisdiction or if it was a bill going to the floor.

Well, that turned out not to be real time efficient. So somewhere in the '20s or '30s, they decided to move the drafting school to Congress, which is what created the Office of House Legislative Counsel. A guy named Ward Hussey was the fellow who was the lead tax legislative drafter for many decades, and no one even knew his name or that he existed, except for the people on the tax writing staffs. And just to give you an idea of how long Ward was there, because he was the key drafter on the '86 Act, the '81 Act, his first assignment was to draft the legislation that implemented the Marshall Plan.

Roskam: Wow.

Kies: Okay. How many here don't know what the Marshall Plan was? Okay, it is scary. But the role they play to this day is unbelievably important, and literally many people don't even know it exists. Now, let's turn to the political environment. The '86 Act, which was considered the biggest reform act since '76, which was the biggest in '69, and was probably the biggest reform act until well into the 2000s, perhaps 2017, that was a piece of legislation that was largely bipartisan. Republicans and Democrats on the Ways and Means Committee met in private and I know there is debate over whether committee should be open or closed. I'm personally a big fan of closed committees and I'll explain why I'll use the '86 Act as an example.

In September of 1985 Rostenkowski started the deliberations on the 86 Act. The members met in private session 10 to 12 hours a day for 20 plus days but as a result, members weren't afraid to ask what might appear to be not the smartest question, which they wouldn't have asked in a public session. But as a result, at the end of 20 days, most of the members of the committee, Democrats and Republicans, had a pretty good idea of what they were going to agree to. And so that was a bipartisan effort. It only blew up on the final night of markup in November of '85 when Rostenkowski staff walked in to me I was the head, Chief Counsel of Ways and Means at the time, walked in at 5:00 on the final day of markup and said here is the transition list which was 110 pages of statutory language. Now, everybody knows transition rules are a big deal, particularly when you're repealing a lot of provisions, which the '86 Act was going to do. And I went and met with my members. Barbara Carnival was the senior Republican from New York. And I said to my members, Bill Frenzel, I said, we only have half an hour to look at this. I cannot tell you what is in here. It is impossible for me to actually explain it to you because it would take me hours to figure this out.

We walk into the hearing room Jim Baker was secretary of the Treasury with Dick Darman. They thought it was going to be a love fest. So, they were up there to wave the banner. Everything is going to go great. This is going to be, we're going to, lots of Republican votes. Joe Daly who was the deputy chief of staff to Rostenkowski, walks over to me, and Jim Baker is basically standing between me. And I say to Joe Dally, Joe, our members are going to ask for a vote on every one of the transition rules. And Joe Dally, who was a friend before and

after, took a swing at me. It is in Gucci Gulch, if you haven't read it. And Baker was literally between us and Baker wisely is sensing things aren't going well and he and Darman about half an hour later slink out of the back of the room and we finished the market at 4 a.m. in the morning and up until that point it was going to be a largely bipartisan bill and, but today is clearly different.

Roskam: Let me build on that and then yield to Keith Heath for a question. So, I was on the committee during TCJA. I chaired the tax subcommittee and was working with Chairman Kevin Brady. And at the outset, we reached out to the other side, some of the business oriented Democrats, some on the top of the dais, the characters and good, members, good people and friends and went and said, look, we, our desire is to put together a bipartisan bill for all the obvious reasons. It is more stable and just makes more sense.

To their credit, they were forthright with us, and they didn't string us out and they didn't waste our time. And this is what they said. Peter, we can't vote for a bill that Donald Trump signs. It is like, well, okay, that is just a plot trap, right? We're not, the man's got to sign the bill. And if you can't rub some dirt on it and figure out how to navigate that, then this can't be a bipartisan bill. And that was this conundrum that we found ourself in, which was personality driven, different than yours. What you were describing is a substantive difference or like, hey, these transition rules are getting jammed on us and we're not going to play this game. But it still lends itself to a highly partisan exercise when all of a sudden you say, okay, it is just shirts and skins. Like, let's go.

Kies: Absolutely correct. And I will say, Rostenkowski as chairman, he became chairman after Al Allman lost his election in 1980 because he was in favor of a VAT. Tip to any members of Congress out there...

Roskam: Doesn't end well.

Kies: ...if you're in favor of it, exactly. It is not going to end well. I was in on program just a couple of days ago, so we said, well, isn't the VAT going to come back? And I said, well, let me explain something to you. First, I explain to Al Allman, I said the only people in favor of a VAT are unelected. Economists who actually have only been elected dog catcher and wouldn't know the politics if it hit him in the face like a dead fish. So, Rostenkowski came in as chairman '81 Reagan sends up his tax bill in June, May, June we go to the floor July 26, 1981. The boll weevils which were then the Southern Democrats voted with the Republicans and defeated Rostenkowski's bill. It was a seminal development.

From that point on, Rostenkowski never took a bill to the floor that didn't have Ways and Means Republican support, which was why the blowup on the '86 Act was a big deal. He still was able to get about four Republicans from the Ways and Means Committee. He would have had eight to nine, notwithstanding the controversy over the transition rules, but yeah today, and it is you might say well, it is only because of President Trump. I'm not so sure. 29, we have a Republican president. No matter who it is, it is hard for me to see how we get back to putting together bipartisan tax legislation and that is unfortunate because it creates this

potential whiplash situation where legislation comes in and then a new party comes in and they want to reverse it. Although some of these provisions are going to be hard to reverse.

The rate cuts, the 2025 tax bill, a lot of attention was given to tips, overtime, car loans, seniors. I see a few people here that actually were pleased with senior deduction. But the real story of the 2025 legislation is permanency. The permanency of the rate cuts, the permanency of expensing, the permanency of the treatment of R&D. That is the real story. And those provisions are not just popular, but they have, particularly the business provisions, significant benefits for U.S. companies. It is going to be hard to undo those things. And that is why the fact that they were made permanent, it was a very big deal. And generally, there is this myth that if you're doing a tax bill on reconciliation, it can only be for 10 years because of procedural rules. That is actually incorrect. The actual rule is you can't have a provision that goes beyond the 10th year unless it is paid for. And in the 2017 Act, the reason the 21% corporate rate was permanent is in the succeeding 10 years there were other corporate provisions that raise revenue that offset the cost of the 21% rate but the fact that 2025 bill is permanent law is a very big deal because it will be very difficult to reverse those provisions given how popular most of them are.

Shuler: The great thing is I learned a lot of history today already, which is wonderful. And I knew the story about the committee when the Democrats moved and that was the start of the Blue Dog Coalition. And so being a part of that organization and John Tanner being one of my mentors, I remember the stories that they would tell. But you have seen, in your office, you've seen and across multiple agencies, a lot of cuts had happened, less resources. How do you evaluate your office and how do you, and including the tax policy enforcement, how is that playing out? And how do you think that your office is doing?

Kies: Okay, so I have two offices, really three. So let me start with the Office of Tax Policy, which is about 150 lawyers and economists. Our headcount is pretty close to what it's been over a number of years. So, that headcount is pretty good. I also have under me the TTB which regulates alcohol et cetera. It is about 400 people. Their headcount is slightly below what they were before COVID, but COVID impacted some people coming back to work some of that thing. Over in the Office of Chief Counsel, I was just looking at these numbers because I'm doing a speech to the conference of all the chief counsels at later today, our headcount is about 2,300 people lawyers, tax lawyers, and other tax professionals. That is basically where it was in 2017 and before in the last four years it was somewhat higher but that was largely because the IRA money.

So, our headcount is actually pretty much in line with where it's been. But let me talk about the IRS more broadly because the enforcement section is on the commissioner side. There is the chief counsel side and there is the commissioner side. What Frank Bisianana would tell you if he were here today who is the, he's the CEO of the IRS, and I know, okay, the president named him CEO and all the nerds in the tax world said, CEO? We've never had a CEO of the IRS. Why would we have a CEO? And I would say, well, who heads the Fortune 500

companies? CEO. Who heads all the other companies in America? CEO. Well, what is the IRS? It is a really, really big financial services company. Its gross revenues are 5.3 trillion. I checked the next closest entity in the world has gross revenues about 250 billion okay in other words we dwarf the entire rest of the world. It is a large financial services business which is technology driven and that is part of my answer to your question.

What Frank Bisianana would tell you is we had a successful filing season this year. Everybody said we were going to start the filing season late. No, we started January 26, that we wouldn't make our deadlines. We made our deadlines. By the time January or April 15th came around, 150 million returns have been filed and processed and refunds had been paid in an average of 13 days. 98 percent of refunds were paid electronically, okay? And what Frank would tell you is what makes that possible is technology.

And I'll just give you one statistic, which is, to me, is a mind-blower. In the last filing season, the IRS had 300 million hits to its online systems. You can go online to find out the status of your refund. You can get your transcript, 300 million. This year, 500 million. 500 million. And as a result, among other things, phone calls to the IRS are down. In other words, we need less people because of what we have done with technology. And what Frank would say, and the Secretary, is what the IRS is doing is what every business in America does. They meet their customers online 24/7 which is the only thing that makes sense. So, we're able to do more with less because of technology. And the technology role is just going to get more important.

Roskam: Ken, let me jump in just real quick because there is a couple of questions we've got to ask you. So let me ask them cumulatively and you can work it out. One is, what is the status of regulatory guidance and how deep will that go? There is a lot of interest there. What is the status on section 1202, the qualified small business stock guidance? And do you have, is anybody dealing with the Johnson Amendment, the religious interaction with nonprofit organizations? And is that on your radar screen?

Kies: Okay, so first off, in terms of regulatory guidance, we put out more, the president signed the bill July 4th of last year. the Office of Tax Policy and the Office of, the Chief Counsel's Office already had a detailed game plan for the 100 plus forms of regulatory guidance that we were going to need to get out in time for the filing season that just closed. All the provisions that were retroactive to January 1, 2025, including tips, overtime, seniors, car loans, and Trump accounts.

And for those of you, anybody here a grandfather, grandmother, if you have grandkids, sign them up for the Trump account. I've got one in the bank, because if your grandchild's born after January 1, 2025, and before 2028, you get a \$1,000 bonus into your Trump account on July 4th. So, I've already got one in the bank. My, Cooper, my grandson, was one last Tuesday, weighs in at 30 pounds. He cannot walk yet, but he can pull himself up and open doors. And my daughter says he is freakishly strong, okay? And then my older daughter is due July 4th, and there was a very serious drafting error with respect to Trump

accounts. There was supposed to be a provision that says if you have a child born on July 4th on the 250th anniversary of the United States, you don't get 1,000, you get 10,000. Okay? So, I'm planning to fix that as soon as I can, okay?

But we put out regulatory guidance all last fall. We still have much more to go. We didn't just put regulatory guidance out with respect to the bill the president signed. We also put out significant regulatory guidance with respect to the corporate alternative minimum tax, which was a truly big deal, because in our view, the prior administration had overreached in implementing the bill passed in 2022. So, we weren't just working on implementing the president's bill, we were also doing other regulatory guidance. On 1202, we are going to put our guidance on 1202. How many here know what stacking is under 1202?

Okay, let me just warn you. We don't like stacking, okay? Just want to give you a little tip. Just keep an eye out for that. In terms of the Johnson Amendment, I was an altar boy, so I'm recused from talking about this. I know a couple of people fainted in the back there. The Johnson Amendment is on our priority guidance plan. There was a reversal in the litigation that is going on there. It is still on our priority guidance plan. And so, we plan to address the issues raised by the Johnson Amendment and the Johnson Amendment litigation, notwithstanding what has happened with respect to the litigation.

Roskam: Ken, thank you for working us in on your dance cart today. I do know that you got a lot going on and you were incredibly generous in terms of your schedule and your timing. And from a BakerHostetler point of view, it is great to have this relationship and this connection. And we're really appreciative of your time and your insight today.

Kies: My pleasure.

Lee: Thank you, Peter, Heath and Assistant Secretary Ken Kies. If you have any questions for Peter, his full contact information is in the show notes. As always, thanks for listening to BakerHosts and "The Cloakroom with Peter Roskam."

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