



In this issue:

Hatch unveils modifications to Tax Cuts and Jobs Act..... 1

Hatch unveils modifications to Tax Cuts and Jobs Act

Senate Finance Committee Chairman Orrin Hatch, R-Utah, released a modified version of his Tax Cuts and Jobs Act November 14 that calls for significant new revenue offsets as well as proposals to pare back some of the tax relief provisions included in the measure as originally introduced last week.

URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/171114_1_suppA.pdf

The modifications, which became public after taxwriters completed their second day of debating the bill in a committee mark-up, are intended to ensure that the tax reform package that eventually moves through the Finance Committee and to the Senate floor does not increase the federal deficit beyond the 10-year budget window (more on that below). Like the original proposal, the modifications were released in summary form rather than statutory language.

A revenue estimate from the Joint Committee on Taxation (JCT) staff was released in conjunction with the proposed modifications.

URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/171114_1_suppB.pdf

Notable changes...

As expected, the amendment would reduce to zero the penalty imposed on individuals who do not have adequate health insurance coverage (the “individual mandate” enacted in the Patient Protection and Affordable Care Act of 2010). This raises substantial revenue (the result of fewer people receiving tax credits and thereby making more revenue available for tax reform).

Among the other noteworthy proposals, the amendment also would:

- Sunset, after 2025, the changes to the individual side of the tax code included in Hatch's original chairman's mark, including marginal rates, changes to credits and deductions, and the proposed doubling of the estate tax exemption;
- Strike proposed changes to the rules affecting the tax treatment of nonqualified deferred compensation;
- Make numerous other modifications to the complex international tax changes proposed in the underlying bill;
- Require certain research and experimentation costs to be amortized over five years (15 if the research is performed outside the US (language that matches a change authored by Ways and Means Chairman Brady, R-Texas, in the tax reform bill that is headed for a vote on the House floor later this week); and
- Make several changes to the Low Income Housing Tax Credit and to the excise tax rules for alcoholic beverages.

Additional details on these changes and the rest of the Finance Committee's mark-up will be provided later this week in *Tax News & Views*.

Reconciliation and the 'Byrd Rule'

Tax reform legislation will be moving under fast-track budget reconciliation protections that will potentially allow it to clear the Senate with a simple majority vote rather than the three-fifths majority – 60 votes – typically required to overcome procedural hurdles in that chamber. The recently approved unified budget resolution for fiscal year 2018 only affords budget reconciliation protections to a tax bill that increases the federal deficit on net by up to \$1.5 trillion over 10 years, and the JCT staff has estimated that the deficit spike from the Finance Committee proposal as originally introduced would come in just under that limit.

URL: <https://www.jct.gov/publications.html?func=startdown&id=5033>

But beyond meeting the 10-year reconciliation instruction, senators also are subject to the budgetary and procedural limits of what's known as the "Byrd Rule" (named for the late Democratic Sen. Robert Byrd of West Virginia) which, among other things, provides that a reconciliation bill cannot increase projected deficits outside that 10-year budget window. Although the JCT staff has not yet issued a long-term revenue score for the proposal that Hatch released on November 9, it is likely to have a multi-trillion dollar revenue loss in the second decade – as evidenced by JCT's assessment of the plan's budgetary effects over the first ten years (2018-2027), which shows large and accelerating revenue losses in the final three years of that budget window. As a result, Senate Republicans needed to add a "curative" amendment to the bill to ensure that its "out-year" budgetary effects are Byrd Rule compliant.

Although the changes help ensure that the Finance proposal does not lose its reconciliation protections, they also may make the measure less appealing to those lawmakers who will need to vote for it and can be expected to complicate the path to passage.

JCT chief to brief taxwriters

JCT Chief of Staff Thomas Barthold is expected to explain the proposed modifications to Finance Committee members when the panel resumes its mark-up of the Tax Cuts and Jobs Act on November 15.

Hatch has indicated the committee will complete its mark-up this week. The measure is currently expected to come to the Senate floor the week of November 27.

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