Tax

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Senate extenders stalemate continues

Negotiations to move a stalled tax extenders package through the Senate showed no signs of progress this week, prompting Majority Leader Harry Reid, D-Nev., to predict that the chamber is unlikely to approve a final bill until after the midterm congressional elections in November.

Dispute over amendments

The extenders package, which cleared the Senate Finance Committee on a bipartisan basis in April, would retroactively renew for two years nearly all of the 55 temporary tax provisions that expired at the end of 2013. (For details, see *Tax News & Views*, Vol. 15, No. 15, Apr. 4, 2014.) The Senate took up the measure on May 13, but it was pulled from the floor two days later after Republicans, who were locked in a dispute with Reid over the process for offering amendments, blocked a procedural motion that would have allowed it to move forward.
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140404_1.html

Over 160 amendments to the extenders package have been filed by Democrats and Republicans alike; but the chief source of contention continues to be a Republican-sponsored provision that would repeal the medical device excise tax enacted in the Patient Protection and Affordable Care Act (PPACA). Senate Finance Committee Chairman Ron Wyden, D-Ore., told reporters late last month that he opposed allowing a vote on that amendment because it was not germane to the underlying extenders package; but he noted that he would be willing to consider amendments directly related to the now-expired tax provisions, such as proposals to shrink or even eliminate the wind production tax credit or alternative fuels credits.

For his part, Reid has stated that he will not allow a vote on proposals to repeal the medical device excise tax or other provisions enacted in the PPACA. In a May 22 speech on the Senate floor, however, he said that he would be "more than happy to return to the tax extender bill" if Republicans offer "a reasonable list of germane amendments."

Weekly meetings

Since the bill was pulled from the floor, Wyden and Finance Committee ranking Republican Orrin Hatch of Utah have been working without success on an agreement that would allow for a limited number of amendments.

“We meet every week and we’ve had a number of constructive conversations on a number of constructive issues,” Wyden told reporters June 2.

The same day, Hatch offered this assessment in response to a press inquiry: “Sooner or later, we’ll get it done.”

But Reid suggested that a quick resolution was unlikely. When asked by reporters on June 3 whether the continuing stalemate meant the extenders bill was effectively on ice until after the elections, he replied, “I guess the answer is yes.”

In his own remarks to reporters on June 3, Senate Minority Leader Mitch McConnell, R-Ky., who has criticized Reid’s stance on amendments, stated that “[a]s soon as we have some kind of reasonable amendment process for bills like [the extenders package] which enjoy pretty broad bipartisan support, it ought to pass.”
URL: http://www.mcconnell.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=800c8475-9d89-4c21-ab56-fc7ab436539e&ContentType_id=c19bc7a5-2bb9-4a73-b2ab-3c1b5191a72b&Group_id=0fd6ddca-6a05-4b26-8710-a0b7b59a8f1f

House: More extenders votes planned for week of June 9

Across the Capitol, the House was away from Washington this week for a district work period, but Majority Leader Eric Cantor, R-Va., indicated in a memorandum to his Republican colleagues that the chamber would vote the week of June 9 on legislation that would permanently extend the increased section 179 expensing limits and phase-out thresholds (H.R. 4457), the five-year recognition period for built-in gains tax for S corporations (H.R. 4453), and the basis adjustment for stock of an S corporation making charitable contributions of property (H.R. 4454). All three measures were approved by the Ways and Means Committee on April 29. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 17, May 2, 2014.) The House has already passed a permanent extension of the research credit. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 18, May 9, 2014.)
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140502_1.html
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140509_1.html

Since April, House taxwriters have approved separate bills that would permanently extend 10 now-expired tax deductions, credits, and incentives. And a Ways and Means Committee aide recently suggested that similar mark-ups will continue into the summer. Speaking at a New York University Federal Real Estate Tax Conference May 30, Ray Beeman, Ways and Means tax counsel and special adviser for tax reform, remarked that “[a]s we progress through June and July you could expect to see further activity in this direction.”

Beeman also explained that the Ways and Means Committee’s strategy of choosing some of the tax extenders for permanent treatment would make the process of tax reform “a lot easier.”

“For us, this is really a baseline construction exercise for tax reform going forward,” he said. Knowing with certainty which extenders provisions would be stricken from the code and which ones would become a permanent part of the budget baseline presumably would give taxwriters additional flexibility as they consider issues such as target rates, revenue projections, and the distribution of benefits and burdens under a reformed tax code.

Beeman did not speculate on the shape of the extenders bill that eventually clears Congress and heads to the White House for the president’s signature, but he urged the Senate “to speak on its position on tax extenders” so the two chambers “can actually engage in a discussion about our two different approaches.”

— Victoria Glover
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Finance Committee to move surface transportation funding bill in June, Wyden says

Senate Finance Committee Chairman Ron Wyden, D-Ore., said June 4 that he expects to move a highway funding bill through his taxwriting panel before lawmakers adjourn for the Independence Day recess. (The chamber will be out of session from June 30 through July 4.)

Taxwriters face a two-pronged revenue problem as annual federal spending on highways and transit continues to outstrip collections from taxes on gasoline, diesel fuel, and other transportation-related activities that provide the revenue stream for the Highway Trust Fund. In the short term, the current trust fund authorization is set to expire September 30, but Transportation Secretary Anthony Foxx told reporters at a May 12 White House press briefing that the trust fund could run out of money as early as August. Over the longer term, the Senate Environment and Public Works Committee marked up legislation last month that calls for funding surface transportation projects for six years at current levels plus inflation. But the Congressional Budget Office has estimated that keeping the trust fund solvent through 2020 would require another $89 billion in additional funding on top of revenues projected from existing sources. If the difference is to be recouped through higher taxes, it will be the Finance Committee's responsibility to develop a proposal to address the anticipated shortfalls, although some members may prefer to find other spending cuts to offset higher highway spending, which could bring other panels into the mix.
URL: http://www.cbo.gov/sites/default/files/cbofiles/attachments/45315-TransportationTestimony.pdf

Speaking to reporters following a bipartisan meeting of Finance Committee members to discuss options for replenishing the trust fund, Wyden said that if the taxwriters complete their work by the end of June, Senate leaders would have "a realistic chance to get [legislation] through the [chamber] and get it done before August."

Finance Committee members have been asked to submit their suggested funding options to Wyden and ranking Republican Orrin Hatch of Utah early in the week of June 9. Wyden did not indicate the specific funding proposals he would support during his comments to the press.

At a May 6 hearing to consider possible tax-based approaches to highway funding, the Finance Committee focused largely on fuel taxes and tax-preferred bond provisions and steered clear of advocating proposals included in tax reform plans put forward by the Obama administration and House Ways and Means Committee Chairman Dave Camp, R-Mich., that would dedicate certain one-time revenue from a tax code overhaul to federal infrastructure projects. (Camp's discussion draft, which was released in February, relies on a one-time repatriation tax on permanently reinvested offshore income of U.S. multinational firms as part of the transition from a worldwide to a territorial tax regime. President Obama's corporate tax reform framework, released in 2012, calls for making a one-time investment in infrastructure using revenue that would be generated from the repatriation of certain offshore income as well as various tax timing-related changes such as repealing the LIFO method of accounting and lengthening depreciation schedules. Some congressional Democrats have suggested that Congress should pursue a repatriation tax now to address current infrastructure funding needs.)

Significantly, Wyden and Hatch signaled in a June 5 release on upcoming tax reform hearings that they do not intend to pilfer offsets from tax reform proposals to pay for the upcoming surface transportation package. According to the release, the Finance Committee will "continue to look for innovative ways to fix the depleted Highway Trust Fund and keep hard-working Americans on the job without diverting revenues from repatriation needed for tax reform."
URL: http://www.finance.senate.gov/newsroom/chairman/release/?id=afb45d67-7bb3-4d0c-bbd7-0c154b930a8d

Because highway funding is considered must-pass legislation, however, Senate Democrats conceivably could seek to force votes on those proposals or recently introduced anti-inversion legislation by offering them as pay-fors as a transportation bill moves through the chamber.

— Michael DeHoff
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Wyden, Hatch announce tax reform hearing topics

Senate Finance Committee Chairman Ron Wyden, D-Ore., and ranking Republican Orrin Hatch of Utah on June 5 announced topics for the first three in a planned series of hearings on discrete issues in tax reform. According to a joint news release, the first hearing, which will be held sometime in June, will address education tax incentives. Two yet-to-be-scheduled hearings in July will focus on identity theft and taxpayer privacy issues as well as modernizing corporate taxation.
URL: http://www.finance.senate.gov/newsroom/chairman/release/?id=afb45d67-7bb3-4d0c-bbd7-0c154b930a8d

Although the release did not identify additional topics, Wyden indicated late last month that he also intends to hold a hearing on international taxation and inversions in the context of tax reform. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 20, May 23, 2014.)
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140523_2.html

— Michael DeHoff
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Top GOP taxwriters voice concerns about OECD's BEPS project

As the Organisation for Economic and Cooperation and Development (OECD) was holding its annual international tax conference in Washington, focusing on the G20/OECD Base Erosion and Profit Shifting (BEPS) project, House Ways and Means Committee Chairman Dave Camp, R-Mich., and Senate Finance Committee ranking member Orrin Hatch, R-Utah, issued a statement on June 2 expressing concerns about efforts by foreign governments to use the project as a way to harm U.S. businesses and the U.S. Treasury.
URL: http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=383338

Background on BEPS project

The G20 and the OECD launched the BEPS project in 2012 to address the issue of so-called "double nontaxation." An action plan released to the public in July 2013 described work to be done to counter BEPS in 15 specific respects, including neutralizing the effects of hybrid mismatch arrangements, strengthening controlled foreign company rules, limiting base erosion through interest deductions and other financial payments, and assuring that transfer pricing outcomes are in line with value creation. (For additional details on the BEPS action plan, see this alert from Deloitte Tax LLP's International Tax group.)
URL: http://newsletters.usdbriefs.com/2013/Tax/TNV/130726_2suppA.pdf

The action plan set forth a robust timeline. All 15 actions outlined in the plan are to result in "deliverables" to be approved by the G20 and the OECD by the end of 2015, and some in September 2014. Discussion drafts of the latter have already been released to the public, triggering voluminous written comments. Public consultations also have been held. The drafts of the 2014 deliverables contain recommendations for hybrid mismatch neutralization, prevention of treaty abuse, modifying transfer pricing with respect to intangibles, and modifying transfer pricing documentation (including "country-by-country" reporting). A draft report on the tax challenges of the digital economy also has been released.
URL: http://www.oecd.org/ctp/calendar-planned-stakeholders-input-2013-2014.pdf

Direction and process

In their press release, Camp and Hatch expressed concern that "the BEPS project is now being used as a way for other countries to simply increase taxes on American taxpayers" and said that if foreign governments "abandon long-standing principles to determine taxing jurisdiction in a quest for more revenue, Americans are threatened with an un-level playing field."

Camp and Hatch also noted that "the extremely ambitious time frame" for completing the 15 items on the action plan "limits our ability to review, analyze, and comment on the rules being proposed." They indicated that they are willing to work through the issues "until an international consensus exists and we have achieved the right answer," but stated that they "will not be rushed into a bad outcome." Camp and Hatch also pledged their support of the Treasury Department "to aggressively represent American employers and their workers in the BEPS negotiations, while responsibly consulting with Congress as its discussions in the BEPS context proceed."

Finally, they argued that United States can best address potential BEPS problems through enacting "comprehensive tax reforms that lower the corporate rate to a more internationally competitive level and modernize the badly outdated and uncompetitive U.S. international tax structure." Such reforms, they said, would "reduce the pressure on American companies to engage in elaborate tax planning . . . to deal with the tax advantages their competitors have over them."

Business leaders weigh in

The statement from Camp and Hatch comes on the heels of a May 30 letter to Treasury Secretary Jack Lew from the Business Roundtable expressing similar concerns about foreign governments using the BEPS project "for the purpose of imposing extraterritorial taxes on U.S. business income," thereby costing the U.S. Treasury revenue. The Roundtable said it was also "gravely concerned" about information reporting proposals developed under the project that could allow global competitors to access confidential and proprietary operational information of U.S. businesses.
URL: http://businessroundtable.org/resources/brt-letter-treasury-secretary-lew-oecd-beps-project

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