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Wyden proposes short-term highway funding fix but delays Finance Committee mark-up

The Senate Finance Committee on June 26 held a hearing to consider a short-term transportation infrastructure funding package offered by Chairman Ron Wyden, D-Ore.; but Wyden delayed a vote on the measure so that he and ranking member Orrin Hatch, R-Utah, could pursue a bipartisan agreement with leaders of the House Ways and Means Committee. Wyden indicated that a formal committee mark-up could take place early in the week of July 7 after Congress returns from its Independence Day recess. (The last scheduled pre-recess work day in both chambers was June 26.)

The current authorization for the trust fund is set to expire September 30. However, according to projections by the Department of Transportation, funding could dry up as early as August as spending continues to outstrip revenue coming into the fund. Wyden has said that the trust fund will require an infusion of approximately $8 billion – on top of amounts projected from existing revenue sources such as taxes on gasoline, diesel fuel, and other transportation-related activities – to remain solvent through the end of the current calendar year. The Congressional Budget Office has estimated that keeping the trust fund solvent through 2020 would require another $89 billion beyond what is projected from dedicated revenue sources. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 24, June 20, 2014.)
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140620_1.html

First attempt

Wyden on June 24 unveiled a proposal with what he characterized as "benign" tax offsets intended to keep the trust fund in the black through the end of 2014. The Joint Committee on Taxation (JCT) staff estimated it would generate some $9 billion over 10 years. But Finance Committee Republicans, including Hatch, objected to some of the pay-fors – most notably, a provision that would double the current heavy vehicle use tax under section 4481 to $1,100 for vehicles over 97,000 pounds – and pushed for more spending cuts. In response to those concerns and after negotiating with Hatch, Wyden released a modified mark at the June 26 hearing.

Revised mark

Wyden's revised package drops the proposed changes to the heavy vehicle use tax; but it retains provisions from the earlier proposal that would:

- Require enhanced information reporting for mortgage loans;
- Clarify rules on overstatement of cost or basis for purposes of the six-year statute of limitations for omission of gross income;

- Require the State Department to revoke passports or reject applications for passports in the case of certain taxpayers with significant unpaid tax liabilities; and
- Modify required distribution rules for pension plans, including requiring certain taxpayers who inherit an IRA to take annual distributions over five years.

The revised proposal also adds new offsets that would:

- Transfer $750 million from the Leaking Underground Storage Tank Trust Fund to the Highway Trust Fund;
- Set the tax rate on liquefied natural gas based on its energy equivalent to a gallon of diesel fuel;
- Establish due diligence requirements for tax return preparers with respect to the American Opportunity Tax Credit; and
- Express a sense of the Senate on the need for a long-term fix that would fund transportation infrastructure projects through 2020.

A description of the provisions is available from the JCT staff.
URL: http://www.finance.senate.gov/imo/media/doc/Description%20of%20the%20Chairman’s%20Modification%20to%20the%20PATH%20Act7.pdf

The modified chairman’s mark would increase federal receipts by $7.6 billion over 10 years, according to JCT staff estimates. Finance Committee members indicated at the hearing that they intend to offer amendments to the revised package at next month’s mark-up. Committee members had already filed over 40 proposed amendments to Wyden’s original proposal by the start of the June 26 hearing.
URL:
http://www.finance.senate.gov/imo/media/doc/Estimated%20Revenue%20Effects%20of%20the%20Chairman’s%20Modification%20to%20the%20PATH%20Act.pdf
URL: http://www.finance.senate.gov/imo/media/doc/Amendments%20to%20the%20PATH%20Act.pdf

Ways & Means negotiations ahead

Wyden and Hatch intend to use the revised chairman’s mark as the basis for their negotiations with Ways and Means Committee Chairman Dave Camp, R-Mich. Camp had declared that Wyden’s first funding proposal was a nonstarter, stating in a June 25 news release that there was “no way tax hikes to pay for more spending [would] fly in the House.” That sentiment – that spending increases should not be offset with higher taxes – has been a consistent position of Republicans since they regained control of the House in the 2010 midterm elections and will complicate efforts to get an agreement with Senate Democrats on a package to keep the Highway Trust Fund solvent. Camp indicated on June 19 that House taxwriters would “try to get as long of an extension of the Highway Trust Fund as [they] can,” but he has otherwise been tight-lipped on specific offsets that have been under consideration.

For his part, Ways and Means Committee ranking member Sander Levin, D-Mich., along with House Budget Committee ranking member Chris Van Hollen, D-Md., introduced legislation on June 26 that would replenish the Highway Trust Fund using revenue generated from the anti-inversion proposal (H.R. 4679) that Levin unveiled in the House last month. The JCT staff has estimated that H.R. 4679, which would be effective for transactions completed after May 8, 2014, would raise nearly $19.5 billion over 10 years. (For more details on the proposal, see *Tax News & Views*, Vol. 15, No. 20, May 23, 2014. Senate Permanent Subcommittee on Investigations Chairman Carl Levin, D-Mich., introduced a similar anti-inversion proposal in that chamber last month.)
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140523_2.html

The Levin-Van Hollen proposal appears unlikely to be incorporated into a highway funding deal, however. House and Senate Republicans have so far shown little appetite for addressing inversions outside of a tax code overhaul that lowers corporate tax rates and moves toward a territorial system for taxing income of U.S. multinationals; moreover, they have not embraced the idea of making changes in this area with a retroactive effective date. For his part, Finance Committee Chairman Wyden has called for addressing inversions retroactively but has stated that a legislative fix likely would not be enacted outside of comprehensive tax reform.

— Jon Almeras & Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

Ways & Means approves education, child tax incentives

The House Ways and Means Committee voted along party lines June 25 to pass two unpaid-for bills that would consolidate certain education tax incentives and expand the child tax credit.

Education incentives

The Student and Family Tax Simplification Act (H.R. 3393), which the committee approved by a vote of 22-13, would replace the Hope Credit, the Lifetime Learning Credit, and the now-expired deduction for qualified tuition expenses with a permanent – but modified – version of the American Opportunity Tax Credit (AOTC). The AOTC is currently scheduled to expire at the end of 2017.

The modified AOTC would be available to taxpayers on a per-student basis (rather than a per-taxpayer basis) at a rate of 100 percent for the first $2,000 per year of eligible higher-education expenses and 25 percent for the next $2,000. The maximum annual credit amount would be $2,500 for up to four years of tuition, fees, and course materials. The credit for the first $1,500 of eligible expenses would be refundable.

The credit would begin to phase out for joint filers with modified adjusted gross income (MAGI) of $160,000 ($80,000 for all other taxpayers) and would be fully phased out at MAGI of $180,000 for married-joint filers ($90,000 for all other taxpayers).

The credit amounts and phase-out ranges would be indexed for inflation for taxable years beginning after 2018.

The bill was sponsored by House taxwriters Diane Black, R-Tenn., and Danny Davis, D-Ill., who led the Ways and Means Committee's bipartisan tax reform working group on education and family benefits in 2013. A substantially similar version of the bill was incorporated into the comprehensive tax reform discussion draft that Ways and Means Committee Chairman Dave Camp, R-Mich., released in February.

Child tax credit

The Child Tax Credit Improvement Act of 2014 (H.R. 4935), which the committee approved by a vote of 22-15, would make the current-law credit more generous by:

- Indexing the $1,000 credit amount for inflation in calendar years beginning after 2014;
- Increasing the beginning of the phase-out range from $110,000 to $150,000 for married-joint filers ($75,000 for all other taxpayers); and
- Indexing the beginning point of the income phase-outs for inflation to the nearest $1,000 in calendar years beginning after 2014.

A number of Democratic committee members expressed concern that the bill does not extend a provision enacted under the American Recovery and Reinvestment Act of 2009 (ARRA) that relaxes the standards for determining the refundable portion of the child tax credit. Without congressional action, the ARRA provision is set to expire in 2018 and a more restrictive standard for determining refundability will apply. Democrats argued that by not addressing this issue, the bill as drafted would enhance the credit for wealthier taxpayers but make it less generous for certain lower-income individuals.

Democrats criticize lack of offsets

The two approved bills, both of which are effective for taxable years beginning after December 31, 2014, would increase federal deficits by a combined $306 billion for fiscal years 2015 through 2024, according to estimates from the Joint Committee on Taxation (JCT) staff. As they did at extenders mark-ups in April and May, Ways and Means Democrats criticized Republicans for proposing permanent tax incentives without including pay-fors.

"What Republicans continue to do today is not only ignore their own lofty rhetoric but also their own budget, which required that any tax cuts be offset. Instead, they continue to drive their runaway tax train into a deficit ditch so deep that when all is said and done, taxpayers will be on the hook for more than $1 trillion in additional debt," Ways and Means ranking Democrat Sander Levin of Michigan said in his opening statement.

For his part, Chairman Camp noted that the Obama administration has offered similar proposals without including offsets.

Democrats did not attempt to offer offsets as amendments to either bill.

Baseline building

The taxwriting panel's mark-up continues Camp's strategy of paving the way for comprehensive tax reform by making selected tax extenders provisions permanent and building them into the budget baseline. Notable extenders that the committee has already voted to make permanent include, among others, the research and experimentation credit, the subpart F exception for active financing income, lookthrough rules for payments between related controlled foreign corporations, the enhanced small business expensing limit and phase-out threshold under section 179, and bonus depreciation. (For additional details, see *Tax News & Views*, Vol. 15, No. 17, May 2, 2014, and *Tax News & Views*, Vol. 15, No. 21, May 30, 2014.) Permanent versions of the research credit, the enhanced section 179 provisions, and other incentives benefiting S corporations have subsequently cleared the House but are not expected to be taken up by the Senate.
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140502_1.html
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140530_1.html

Further Ways and Means mark-ups on selected expiring tax provisions are expected over the summer. As of press time, no further mark-ups or hearings had been scheduled. It is also unclear when the next batch of permanent tax extenders will be taken up on the House floor. But in remarks at the Heritage Foundation on June 24, Camp indicated that he did not expect the extenders agenda to change as a result of pending changes in the House GOP leadership roster. (Rep. Eric Cantor, R-Va., will step down as House majority leader effective July 31 and will be replaced by Rep. Kevin McCarthy, R-Calif., the current majority whip. Rep. Steve Scalise, R-La., will take over for McCarthy as majority whip. For prior coverage, see *Tax News & Views*, Vol. 15, No. 24, June 20, 2014.)
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140620_2.html

"Regardless of the shakeup in leadership, I expect the committee and the House will continue to process permanent tax policy through the Senate," Camp said. "Of course, we have to wait and see if the Senate can produce anything before we start final negotiations. But let me be clear about those negotiations – I fully intend to make some of these provisions permanent so businesses and families don't have to wonder year-in-and-year-out whether parts of the tax code that encourage investment and economic growth will remain a part of the tax code."

Finance Committee examines education tax incentives

Across the Capitol, the Senate Finance Committee held a hearing June 24 on various education tax incentives as part of its own effort to overhaul the tax code.

Finance Committee Chairman Ron Wyden, D-Ore., called for whittling down the education tax incentives into a few user-friendly credits and doing more to inform students and their families about the tax incentives available to help defray the costs of higher education. He also called for enhancing the section 529 tuition savings program and using the Earned Income Tax Credit to provide a match for working parents who are saving for their children's education expenses.

Ranking member Orrin Hatch, R-Utah, noted that education tax incentives are very complex and, at a minimum, should be consolidated and reformed, but added that "we need to determine once and for all whether federal subsidization of higher education is good policy and whether a tax subsidy would be provided more efficiently by direct spending."

Taxwriters discussed the idea of requiring colleges and universities to pay out 5 percent of their endowments annually to make more money available for student aid. (Private foundations are already required under the tax code to make a 5 percent annual payout from their endowments.). Dean Zerbe of the Alliant Group, a witness at the hearing, supported the proposal, but Finance Committee member Charles Grassley, R-Iowa, feared that a 5 percent payout might become a ceiling rather than a floor.

Grassley also asked Zerbe to comment on a proposed 1 percent excise tax on some university endowments that was included in Ways and Means Committee Chairman Dave Camp's comprehensive tax reform discussion draft. Zerbe indicated that he would generally support such a proposal. After the hearing, Wyden told reporters that he would prefer "retooling" the existing education tax incentives to implementing Camp's excise tax proposal.

Scott Hodge of the Tax Foundation, another witness at the hearing, suggested shifting resources out of education tax subsidies and into established programs like Pell Grants. He argued that trading education tax benefits for lower marginal tax rates would be the best option for improving economic growth.

Wyden has indicated that he plans to hold additional tax reform hearings in July focusing on identity theft and taxpayer privacy issues as well as modernizing corporate taxation. He also intends to hold a hearing on international taxation and inversions in the context of tax reform. Specific dates have not been announced.

— Victoria Glover
Tax Policy Group
Deloitte Tax LLP

Have a question?
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