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In this issue:

House and Senate taxwriters draw lines over highway funding fix

After recent talks between congressional taxwriting leaders aimed at reaching a bipartisan, bicameral agreement for funding transportation infrastructure projects apparently fell flat, the House Ways and Means Committee and the Senate Finance Committee on July 10 approved competing short-term proposals to replenish the rapidly dwindling Highway Trust Fund and extend its spending authority into 2015.

Ways & Means mark-up

The Ways and Means Committee package (H.R. 5021), which Chairman Dave Camp, R-Mich., unveiled on July 8, was approved by voice vote. It would renew Highway Trust Fund spending through May 31, 2015, through an infusion of approximately $10 billion from the general fund and another $1 billion from the Leaking Underground Storage Tank Trust Fund.

The transfer from the general fund would be offset by:

- A so-called "pension smoothing" provision that would modify the interest rate that employers must use to calculate their pension plan liabilities for purposes of determining their annual minimum funding obligations. (The change would have the effect of lowering an employer's plan funding payments and reducing the value of its deductions for those payments.)
- A provision that would extend Customs user fees for an additional year (through September 30, 2024).

According to the Joint Committee on Taxation (JCT) staff, the pension smoothing provision would increase federal revenues by approximately $6.4 billion from 2014-2024 and the extension of Customs user fees would increase revenues by roughly $3.5 billion over the same period.

Additional details on these provisions are available in a JCT staff publication describing the bill.
URL: https://www.jct.gov/publications.html?func=startdown&id=4644

Democrats push for shorter patch – A number of Ways and Means Democrats, including ranking member Sander Levin of Michigan, argued that extending the trust fund authorization through next May would only encourage Congress to put off work on a long-term funding fix. They argued instead that the committee should replenish the fund only through the end of this year in order to put pressure on Congress to act on a long-term solution in a lame duck session after the November midterm elections.

“We must acknowledge that our nation’s transportation infrastructure requires reliable and sustainable funding. Funding the trust fund through the end of the year will maintain the pressure on this Congress to reach that long-term solution,” Levin remarked in his opening statement.

But Chairman Camp argued in his opening statement that “a funding package that just goes to the end of 2014 would only create a larger crisis in December.”

“We all know what lame duck deals look like, and, more importantly, how they come together. They are not done in this room and they are not done by the members of this committee. Maybe one or two of us will be consulted, but they are often leadership deals with the committees on the outside looking in. …We need to get back to a more open, deliberative process – something I have tried to do. So, this bill gives this committee time to deliberate and produce a longer-term solution by the end of May next year,” Camp said.

An amendment by Ways and Means Democrat Earl Blumenauer of Oregon that would have extended funding for the trust fund only through the end of the year and provided for a sense of Congress that long-term transportation authorization should be enacted was defeated along party lines.

Finance Committee mark-up: Take 2

Across the Capitol, members of the Senate Finance Committee returned for a highway bill mark-up that Chairman Ron Wyden, D-Ore., had postponed late last month in the hopes that he and ranking member Orrin Hatch, R-Utah, could work out an agreement that would be more acceptable to committee Republicans and to Ways and Means Chairman Camp. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 25, June 27, 2014.)
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140627_1.html

Aides for Wyden, Hatch, and Camp reportedly met during the Independence Day recess to discuss the framework of a possible compromise. Although no apparent deal with Camp had emerged by the time Congress came back into session this week, the revised package that Wyden presented at the July 10 mark-up does share many similarities with the Ways and Means proposal and it cleared the Finance Committee by a nearly unanimous voice vote. (Sen. Tom Carper, D-Del., was the sole dissenter.)

Like the Ways and Means bill, the Finance Committee package calls for transferring roughly $10 billion to the Highway Trust Fund from the general fund and another $1 billion from the Leaking Underground Storage Tank Trust Fund. The Finance Committee bill does not include a specific expiration date for Highway Trust Fund spending authority, however, and instead provides that spending authority would continue until funds run out. This represents a change from the proposal Wyden had prepared for the planned June 26 mark-up, which called for extending Highway Trust Fund spending authority only through December 31, 2014.

Pension smoothing, Customs user fees – Also like the Ways and Means Committee bill, the Finance Committee package would partially offset the general fund transfer with:

- A pension smoothing provision. This provision is more narrowly crafted than its Ways and Means counterpart, however, and would increase federal revenues by only $2.7 billion over 10 years (less than half the amount raised by the Ways and Means provision), according to estimates from the JCT staff.
- An extension of Customs user fees (but only through January 7, 2024). The JCT staff estimates that this provision, plus a short-term extension of a related fee on merchandise entered or released into the United States, would increase federal revenues by a combined $3 billion over 10 years. (The extension of the merchandise processing fee is not included the Ways and Means bill.)

Tax compliance provisions – The Finance Committee bill also includes several tax compliance-related offsets that are not part of the Ways and Means package. These provisions would:

- Require financial institutions to provide enhanced information reporting on mortgages (JCT 10-year estimated revenue gain: $2.1 billion);
- Clarify rules on overstatement of cost or basis for purposes of the six-year statute of limitations for omission of gross income (JCT 10-year estimated revenue gain: $1.3 billion);

- Provide a 100 percent continuous levy authority on payments to Medicare providers and suppliers to collect unpaid taxes (JCT 10-year estimated revenue gain: $812 million); and
- Impose a penalty on tax return preparers that fail to meet due diligence requirements with respect to the child tax credit (JCT 10-year estimated revenue gain: $43 million).

Other provisions – As approved, the Finance Committee bill includes two small revenue-losing provisions that would:

- Set the tax rate on liquefied natural gas based on its energy equivalent to a gallon of diesel fuel (JCT estimated 10-year revenue loss: $22 million) and
- Modify the tax-exemption requirements for mutual ditch or irrigation companies (JCT estimated 10-year revenue loss: $37 million).

The bill also provides for a sense of the Senate resolution calling on Congress to pass legislation that funds transportation infrastructure projects through 2020.

The approved bill drops a provision from the funding package that Wyden released for the planned June 26 mark-up that called for modifying required distribution rules for pension plans, including requiring certain taxpayers who inherit an IRA to take annual distributions over five years rather than over a longer period. Also omitted was a provision that would have required the State Department to revoke passports or reject applications for passports in the case of certain taxpayers with significant unpaid tax liabilities.

The measure also excludes changes to the heavy vehicle use tax that Wyden had floated in a proposal released earlier last month.

A description of all the provisions in the bill is available in a publication from the JCT staff.
URL: https://www.jct.gov/publications.html?func=startdown&id=4648

Next steps

House Speaker John Boehner, R-Ohio, has indicated that the Ways and Means Committee bill will receive a vote on the House floor during the week of July14. At press time, Senate Majority Leader Harry Reid, D-Nev., had not announced a timeline for moving the Finance Committee package.

Assuming both bills clear their respective chambers, it is unclear how quickly lawmakers would be able to resolve the differences over offsets and send a final package to the president for his signature. In a July 10 press release, Ways and Means Chairman Camp criticized the tax compliance provisions in the Finance Committee bill and stated that "it is inconceivable that the House would, as the Senate proposes to do, grant the IRS additional authority to audit and investigate taxpayers simply so Washington can spend more money."

For his part, Finance Committee ranking member Hatch noted during his opening statement at his panel's mark-up that he was "disappointed" that he and Wyden were not able to reach an agreement on a bicameral proposal with Camp; but he added that "looking at [the Ways and Means] proposal and the one we're marking up today, it doesn't look like we're all that far apart on the issues."

Congress has only a few legislative days left to resolve this issue before lawmakers adjourn for their traditional August recess. 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.

— Victoria Glover
Tax Policy Group
Deloitte Tax LLP

House approves permanent bonus depreciation deduction

The House of Representatives voted 258-160 on July 11 to pass an unpaid-for bill (H.R. 4718) that would expand and permanently extend the 50 percent bonus depreciation deduction for qualified property and the election to accelerate alternative minimum tax (AMT) credits in lieu of bonus depreciation that expired at the end of 2013.

More generous benefits

H.R. 4718, which was sponsored by House GOP taxwriter Pat Tiberi of Ohio and approved by the Ways and Means Committee on May 29, would be effective for qualified property placed in service after December 31, 2013. In addition to making the now-expired bonus depreciation deduction permanent, the legislation would make it more generous by:

- Expanding the definition of qualified property to include qualified retail improvement property;
- Making permanent the special rule for the allocation of bonus depreciation to a long-term contract;
- Indexing the prior-law $8,000 increase in the depreciation deduction limitation for certain passenger automobiles to automobile price inflation; and
- Allowing taxpayers to claim bonus depreciation on trees and vines bearing fruits or nuts.

The legislation also includes a permanent provision that would allow corporations to elect to accelerate some AMT credits in lieu of bonus depreciation. The bonus depreciation amount for a taxable year would be limited to the lesser of (1) 50 percent of the minimum tax credit for the first taxable year ending after December 31, 2013, or (2) the minimum tax credit for the taxable year allocable to the adjusted net minimum tax imposed for taxable years ending before January 1, 2014 (determined before the application of any tax liability limitation and determined on a first-in, first-out basis). This provision generally would be effective for taxable years ending after December 31, 2013. A transition rule would apply for a taxable year beginning before January 1, 2014, and ending after December 31, 2013.

The expanded bonus depreciation provision would reduce federal revenues by nearly $262.9 billion over 10 years and the expanded election to accelerate AMT credits in lieu of bonus of depreciation would reduce revenues by an additional $24.5 billion over that same period, according to estimates from the Joint Committee on Taxation staff.
URL: https://www.jct.gov/publications.html?func=startdown&id=4651

More House extenders action ahead?

Passage of the bill in the House advances Ways and Means Committee Chairman Dave Camp's, R-Mich., strategy of making selected tax extenders provisions permanent and allowing others to remain expired in advance of comprehensive tax reform. The chamber has now approved five permanent extenders provisions that have cleared the Ways and Means Committee since May. (Others include the research credit, enhanced section 179 expensing limits, and two smaller provisions benefiting S corporations. For prior coverage, see *Tax News & Views*, Vol. 15, No. 18, May 9, 2014, and *Tax News & Views*, Vol. 15, No. 23, June 13, 2014.)
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140509_1.html
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140613_1.html

Ways and Means-approved extenders legislation still awaiting action on the House floor would make permanent the subpart F exception for active financing income, lookthrough rules for payments between related controlled foreign corporations, the deduction for charitable contributions of food inventory, the gross income exclusion for qualified charitable distributions from an individual retirement account for individuals age 70-1/2 and older, the increased percentage limits and extended carryforward period for qualified conservation contributions, and the American Opportunity Tax Credit. (For prior coverage, see *Tax News & Views*, Vol. 15, No. 17, May 2, 2014; *Tax News & Views*, Vol. 15, No. 21, May 30, 2014; and *Tax News & Views*, Vol. 15, No. 25, June 27, 2014.)
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140502_1.html
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140530_1.html
URL: http://newsletters.usdbriefs.com/2014/Tax/TNV/140627_2.html

House Majority Whip Kevin McCarthy, R-Calif., stated July 11 that the House could vote on the charitable giving incentives the week of July 14. Other extenders bills may receive a vote in the House before the chamber adjourns for the August recess, and additional extenders mark-ups in the Ways and Means Committee are also possible.

White House veto threat

In a Statement of Administration Policy issued July 10, the Obama administration criticized the permanent bonus depreciation proposal for its lack of offsets, noted that bonus depreciation "was never intended to be a permanent corporate giveaway," and stated that the president's senior advisors would recommend that he veto the bill if it reaches his desk in its current form.
URL: http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr4718h_20140710.pdf

The White House has threatened similar action on the other permanent extenders bills approved in the House so far.

Senate action unlikely

None of the House-approved extenders bills is expected to be taken up in the Democratic-controlled Senate. The Senate Finance Committee approved legislation in April that would retroactively extend for two years most – but not all – of the 55 temporary tax deductions, credits, and incentives that expired at the end of last year; but Senate leaders have been unable to move it through the chamber due to a partisan dispute over amendments and Majority Leader Harry Reid, D-Nev., has indicated that final action is unlikely until Congress convenes in a lame duck session after the November midterm elections.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

House, Senate bills address corporate relocations

The House voted 221-200 on July 10 to approve an amendment to the Energy and Water Development and Related Agencies Appropriations Act, 2015 (H.R. 4923) that would deny federal contracts to former U.S.-incorporated businesses that subsequently reincorporated in Bermuda or the Cayman Islands. Thirty-four Republicans joined 187 Democrats in supporting the amendment. The provision would be effective from October 1, 2014, through September 30, 2015. The underlying appropriations bill subsequently passed by a vote of 253-170.

In the Senate, meanwhile, Majority Leader Harry Reid, D-Nev., announced July 8 that the chamber will vote this month on legislation (S. 2562) offered by Finance Committee member Debbie Stabenow, D-Mich., that would provide a 20 percent tax credit for certain expenses related to relocating an offshore business unit to the United States, and deny deductions for certain expenses related to eliminating a business unit located within the United States and relocating it offshore.

Stabenow offered similar legislation (S. 3364) in 2012, but it failed to clear a procedural hurdle on the Senate floor. (For prior coverage, see *Tax News & Views*, Vol. 13, No. 28, July 20, 2012.) She reintroduced the proposal in 2013 as S. 337, but it has not been taken up in the Senate Finance Committee. The legislation mirrors a proposal that has been included in previous Obama administration budget packages.
URL: http://newsletters.usdbriefs.com/2012/Tax/TNV/120720_2.html

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

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