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House and Senate clear 10-year budget plans, conference committee to follow

The House and Senate this week cleared separate budget resolutions that lay out broad goals for federal revenues and spending over the next 10 years. Both blueprints were approved largely along party lines after Democrats unsuccessfully offered several alternative proposals (in the House) and a slew of amendments (in the Senate) that were in many cases designed to raise revenues significantly above the levels called for in the Republican-drafted plans.

The two budget plans are designed to put the federal budget on a path to balance through major reductions in spending. The House budget, drafted by House Budget Committee Chairman Tom Price, R-Ga., would pare spending by almost $5.5 trillion in order to achieve a budget surplus by fiscal year 2024. The Senate blueprint, drafted by Senate Budget Committee Chairman Mike Enzi, R-Wyo., would reach balance one year later through spending cuts totaling $5.1 trillion. (Both figures include lower interest payments attributable to a smaller accumulation of federal debt). The Senate budget also calls on the Joint Committee on Taxation and the Congressional Budget Office to produce estimates of the so-called "dynamic" effects of certain bills on federal revenue and spending levels attributable to their impact on the broader economy.

Both plans also call for revenue-neutral tax reform for businesses and individuals, but are light on supporting details. (For additional details on the two congressional budget blueprints, see *Tax News & Views*, Vol. 16, No. 11, Mar. 20, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150320_2.html

House votes on two GOP plans, rejects alternatives

The House budget passed on March 25 by a vote of 228-199. As a result of a unique procedural arrangement intended to address internal Republican divisions over appropriate levels of defense spending, the House actually voted on two Republican budgets offered by Chairman Price – one that mirrored the product reported by the House Budget Committee on March 19 and another that was largely identical but provided additional funding for defense. The latter blueprint is the one that was ultimately approved by the House.

Alternatives defeated: In a sign of continuing divisions between the two parties on issues of tax and budget policy, the House voted down an alternative Democratic plan offered by House Budget Committee ranking member Chris Van Hollen of Maryland that called for raising about $1.8 trillion more in revenue than the levels called for in the House and Senate Republican plans.

Other failed alternative budgets include proposals from the Congressional Progressive Caucus and Congressional Black Caucus that would have raised even more revenue than Van Hollen's plan, as well as a blueprint offered by the Republican Study Committee that purported to balance the federal budget in six years and reduce government spending by $7.1 trillion without raising additional revenue.

Senate highlights tax priorities in 'vote-a-rama'

Across the Capitol, the Senate cleared its own budget resolution by a vote of 52-46 in the early hours of March 27 after a marathon session of amendment votes known as the "vote-a-rama." (In the Senate, debate time on a budget resolution is limited to 50 hours, but there is no limit on the number of amendments that may be considered without debate after the 50-hour debate period has lapsed.)

Approved amendments: Among the tax-related amendments approved during Senate floor consideration are proposals that would establish deficit neutral reserve funds to:

- Reduce the corporate tax rate (to an unspecified level), offered by Finance Committee Chairman Orrin Hatch, R-Utah;
- Eliminate the estate tax, offered by Finance Committee member John Thune, R-S.D.;
- Permanently extend the enhanced small business expensing limitations under section 179, offered by Finance Committee member Michael Bennet, R-Colo.;
- Expand certain refundable middle-class tax credits, offered by Finance Committee ranking member Ron Wyden, D-Ore.;
- Prohibit the imposition of an energy tax, offered by Sen. Roy Blunt, R-Mo.; and
- Provide relief from taxes and government red tape to promote job growth, offered by Sen. Mark Kirk, R-Ill.

A reserve fund adopted as part of a budget resolution functions as a placeholder for subsequent legislation in a general policy area and is typically the vehicle that lawmakers use to offer "message" amendments. A deficit-neutral reserve fund requires that the subsequent legislation have no net negative effect on the federal deficit.

The Senate also approved an amendment offered by Finance Committee member Rob Portman, R-Ohio, that clarifies the dynamic scoring requirement for certain tax legislation that was included in the underlying budget resolution approved in the Senate Budget Committee on March 19.

Revenue-raising tax amendments defeated: Senate Republicans generally banded together to defeat Democratic tax amendments that proposed to raise new revenue by, among other things:

- Redirecting $478 billion in savings from closing unspecified corporate tax breaks into increased spending on infrastructure projects, offered by Budget Committee ranking member Bernie Sanders of Vermont, an Independent who caucuses with the Democrats;
- Eliminating tax incentives that may encourage firms to relocate jobs outside the US and "closing offshore tax loopholes (including those relating to inversions)," offered by Finance Committee member Debbie Stabenow, D-Mich.;
- Providing tax benefits to employers that invest in American jobs and offer fair pay and benefits to workers and eliminating tax benefits for corporations that ship jobs overseas, offered by Senate Minority Whip Richard Durbin, D-Ill.;
- Increasing taxes on "millionaires and billionaires" to pay for free community college for low- and middle-class individuals, offered by Sen. Tammy Baldwin, D-Wis.;
- Requiring millionaires to pay an effective minimum tax rate of at least 30 percent to offset the cost of refinancing of student loan debt, offered by Sen. Elizabeth Warren, D-Mass.; and
- Closing various tax "loopholes" to pay for new preschool programs for children in low- and middle-income families, offered by Sen. Patty Murray, D-Wash.

Also defeated were two proposed amendments that would create deficit-neutral reserve funds to eliminate the deduction for corporate compensation over $1 million (offered by Sen. Jack Reed, D-R.I.) and finance the war against ISIS (offered by Sen. Chris Coons, D-Del.).

A glimpse of Senate tax proposals to come?: Amendments adopted in the budget resolution are not considered binding on the Senate, but they do highlight lawmakers' legislative priorities and are often more noteworthy for their later use in campaign commercials than for their impact on the legislative process. At the same time, budget-related amendments that are approved with significant bipartisan support can often provide momentum for subsequent legislative efforts. An amendment adopted in a prior-year budget vote that called for repealing the medical device excise tax is viewed by many as the catalyst that drives continued efforts to repeal the tax today.

Next stop: Conference committee

The two budget blueprints now move to a conference committee to be led by House Budget Committee Chairman Price and Senate Budget Committee Chairman Enzi which will seek to arrive at a compromise product that can be passed through each chamber by April 15 – a nonbinding deadline spelled out in the Congressional Budget and Impoundment Control Act of 1974.

It is important to note that even if the two chambers agree on and pass an identical resolution and a congressional budget is adopted, the measure would not go to President Obama for his signature (or veto) and would never become law. Still, a congressional budget resolution is an important document that lays out Congress's broad tax and spending priorities and sets a top-line figure which is used by the congressional Appropriations committees to draft spending bills for the upcoming fiscal year. (The appropriations legislation currently funding domestic and defense programs is set to lapse after the end of the current fiscal year on September 30, 2015.)

Reconciliation instructions: Of additional importance in this year's budget process is the Republican-fueled effort to include what are known as "budget reconciliation" instructions in the congressional budget resolution. If included in a congressionally adopted budget resolution, reconciliation instructions provide a fast-track procedure that limits debate in the Senate and allows for passage of certain legislation in that chamber by a simple majority vote, as opposed to the 60 votes normally required to clear procedural hurdles – a potentially useful tool for Republicans who currently hold 54 Senate seats.

Many Republicans have expressed an interest in using reconciliation to send legislation to the president that would repeal the Patient Protection and Affordable Care Act (PPACA) and related provisions of the Health Care and Education Reconciliation Act of 2010, including the revenue increases enacted in those laws. Both the House- and Senate-approved blueprints include reconciliation instructions to relevant committees ostensibly targeted at such a repeal effort.

The instructions are general enough, however, that they potentially could be used for other purposes, such as addressing the fallout if the US Supreme Court decides in *King v. Burwell* that tax subsidies under the PPACA are available only on state-based exchanges. In any case, under the rules governing the process, reconciliation instructions cannot stipulate particular policies that are under the jurisdiction of other committees.

Tax reform developments

Although the House and Senate budget blueprints may help pave the way for tax reform by identifying it as a legislative priority, plans in the two congressional taxwriting committees for moving tax reform legislation – and details on what that legislation might look like – remain largely uncertain.

House Ways and Means Committee Chairman Paul Ryan, R-Wis., told reporters March 26 that he could consider moving business-only tax reform legislation this year provided that it addressed passthrough entities and could serve as a bridge to a subsequent overhaul of the individual tax rules.

Ryan indicated that he would not support a one-time repatriation holiday to pay for infrastructure spending. He added that he would support a short-term patch for the Highway Trust Fund (whose spending authority is set to expire on May 31) and suggested that tax reform could provide a longer-term solution to the nation's infrastructure spending needs.

Ryan also told reporters that Ways and Means Committee member Charles Boustany, R-La., was taking the lead on developing a plan to overhaul the tax treatment of US-based multinationals. (Boustany indicated on March 25 that he would release such a plan later this spring.)

For his part, Senate Finance Committee Chairman Hatch told reporters on March 24 that it remains his goal for the taxwriting panel to mark up tax reform legislation this year, but that a final decision is unlikely until after the committee's five tax reform working groups complete their work. (The working groups are expected to submit their findings and recommendations in their specific policy areas to Finance Committee leaders by the end of May.)

"We'll sit down with all of them in May and then see what they've come up with and see if we can come up with a reform bill that really makes sense and might draw bipartisan support," Hatch said.

Hatch also reiterated his belief that tax reform will not succeed without "a president who's a driving force in tax" and expressed uncertainty over whether President Obama is willing to assume a leadership role in the debate.

"I don't know if the president will be a driving force in tax; thus far he hasn't proven to be," Hatch said.

Reid to retire: In other developments, Senate Minority Leader Harry Reid, D-Nev., announced March 27 that he would not run for re-election to his Senate seat in 2016 but that he intended to remain in his leadership post for the duration of the 114th Congress.

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House taxwriters approve estate tax repeal legislation

The House Ways and Means Committee on March 25 voted 22-10 – along party lines – to approve legislation (H.R. 1105) sponsored by committee member Kevin Brady, R-Texas, that would end the estate tax.

According to a description prepared by the Joint Committee on Taxation (JCT) staff, the Death Tax Repeal Act of 2015 (as amended by Ways and Means Committee Chairman Paul Ryan, R-Wis.) would repeal estate and generation-skipping transfer taxes for decedents dying and generation-skipping transfers made on or after the date of enactment. A transition rule for assets placed in a qualified domestic trust by a decedent who died before the effective date of the proposal provides that estate tax would not be imposed on:

- Distributions from the trust made to a surviving spouse more than 10 years after the date of enactment or
- Assets remaining in the trust upon the death of the surviving spouse.

The bill would retain the gift tax with the present-law exemption amount ($5 million, indexed annually for inflation after 2011) and a top gift tax rate of 35 percent (down from 40 percent under current law).

Current-law rules for determining the income tax basis of assets acquired by gift or from a decedent would remain unchanged. As a result, property received from a donor of a lifetime gift generally would continue to take a carryover basis, and property acquired from a decedent's estate generally would continue to take a stepped-up basis.

As approved by the committee, the legislation does not include revenue offsets. The JCT staff has estimated that the bill would reduce federal revenues by nearly $269 billion over 10 years.

Partisan split: Debate on the legislation fell along largely familiar partisan lines. Chairman Ryan argued in his opening statement that taxpayers have "earned the right to leave something for their kids – often a family business – without being penalized for it. And [the estate] tax doesn't just hit the big guy. It hits the little guy – like the small business and the family farm. It is both unwise and unfair, and it needs to go."

But Ways and Means Committee ranking Democrat Sander Levin of Michigan, citing JCT statistics, contended in his opening statement that only the very wealthiest estates – about 5,000 a year – are subject to the estate tax and that repealing the levy would reinforce the public perception that "a select few play by a different set of more favorable rules than everyone else."

Enactment unlikely

The full House is currently expected to consider Brady's bill the week of April 13, when lawmakers return from their spring recess. (Congress will be out of session from March 28 through April 12.) Passage in that chamber is considered likely.

Prospects for estate tax repeal in the Senate are less certain, however. Senate Finance Committee member John Thune, R-S.D., introduced companion legislation in that chamber on March 25, but the measure could face procedural hurdles from Democrats. An amendment calling for repeal of the estate tax that Thune offered during the "vote-a-rama" on the Senate budget resolution on March 26 was approved by a vote of 54-46 – short of the 60-vote threshold that a freestanding bill would have to meet in order to guarantee passage on the Senate floor. (For additional discussion of the Senate budget resolution and the amendment process, see separate coverage in this issue.) In remarks to reporters on March 17, Finance Committee Chairman Orrin Hatch, R-Utah, alluded to those potential procedural difficulties when he expressed his support for repealing the estate tax but noted that "everything over here is problematic, more difficult." Hatch has not yet announced plans for taking up the legislation in the Finance Committee.

The legislation is unlikely to win support from President Obama, who in his fiscal year 2016 budget proposed to return estate tax parameters to their 2009 levels: a 45 percent top rate and $3.5 million exemption per spouse. (The current-law top rate is 40 percent; the exemption amount, which is indexed annually for inflation, is $5.43 million per spouse in 2015.) The administration's budget blueprint also proposes to eliminate stepped-up basis for assets

transferred at death, subject to certain exclusions. (For additional details on notable estate and gift tax provisions in the president's budget proposal, see *Tax News & Views*, Vol. 16, No. 6, Feb. 6, 2015.) The White House has not yet issued an official policy statement on Brady's bill.
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150206_1.html

Other bills approved

In addition to H.R. 1105, House taxwriters approved by voice vote several other measures at the March 25 mark-up related to, among other things, taxpayer rights and protections when dealing with the Internal Revenue Service; restrictions on the use of personal e-mail by IRS employees for official business; the treatment of organizations applying for tax-exempt status; the process for determining tax-exemptions of organizations under section 501(c)(4); and the gift-tax treatment of donations to tax-exempt organizations under sections 501(c)(4), 501(c)(5), and 501(c)(6). Legislative text and JCT descriptions of these bills are available on the Ways and Means Committee website.
URL: http://waysandmeans.house.gov/calendar/eventsingle.aspx?EventID=398223

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A note on our publication schedule

The House and Senate will be out of session from March 28 through April 12 as lawmakers leave Washington for a two-week local work period. Barring unexpected developments in tax policy, the next edition of *Tax News & Views* will be published after Congress returns to Capitol Hill.

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