



Tax

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Estate tax repeal, permanent state and local sales tax deduction clear House

The House of Representatives on April 16 approved separate bills sponsored by Ways and Means Committee member Kevin Brady, R-Texas, that would repeal the estate tax and permanently extend the now-expired deduction for state and local general sales taxes.

Estate tax repeal

According to a description provided by the Joint Committee on Taxation (JCT) staff, the Death Tax Repeal Act of 2015 (H.R. 1105), which cleared the chamber by a vote of 240-179, would repeal estate and generation-skipping transfer (GST) 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:

URL: <https://www.jct.gov/publications.html?func=startdown&id=4760>

- 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, 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.

[URL: https://www.jct.gov/publications.html?func=startdown&id=4768](https://www.jct.gov/publications.html?func=startdown&id=4768)

State and local sales tax deduction

The State and Local Sales Tax Deduction Fairness Act of 2015 (H.R. 622), which passed by a vote of 272-152, would make permanent the now-expired provision allowing taxpayers to elect to deduct state and local sales taxes in lieu of state and local income taxes, effective for taxable years beginning after December 31, 2014. (The deduction, which is one of the traditional temporary tax “extenders” provisions, expired at the end of 2013, was renewed retroactively for one year as part of the extenders package enacted in the final days of the 113th Congress, and expired once again at the end of 2014 along with the other provisions in the extenders legislation.)

According to the JCT staff, the unoffset bill would reduce federal revenues by an estimated \$41.6 billion over 10 years.

[URL: https://www.jct.gov/publications.html?func=startdown&id=4767](https://www.jct.gov/publications.html?func=startdown&id=4767)

(Mostly) partisan split

Floor debate on the two bills fell chiefly along party lines. Republicans generally argued that the estate tax unfairly burdens small business owners and family farmers and that the temporary nature of the state and local sales tax deduction leaves taxpayers subject to the vagaries of the annual extenders process.

Democrats, for the most part, contended that repealing the estate tax would benefit only the wealthiest taxpayers and that doing so without revenue offsets would blow a hole in the deficit. While they were more sympathetic in principle to a permanent extension of the state and local sales tax deduction, most Democrats objected to the fact that the bill under consideration did not include offsets. H.R. 622 did win the support of 34 Democrats – mostly those representing states that do not impose an income tax and whose residents are the chief beneficiaries of the state and local sales tax deduction. (Currently Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming have no income tax of any kind; New Hampshire and Tennessee do not tax income from wages but do impose tax on certain interest and dividend income.)

Future prospects in doubt

Neither bill has a clear path forward in the Senate. Finance Committee member John Thune, R-S.D., introduced a companion estate tax repeal bill in that chamber on March 25, but the measure could face procedural hurdles from Democrats concerned about its impact on the deficit. (An amendment that called for eliminating 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.)

Legislation (S. 126) that would permanently extend the deduction for state and local sales taxes was introduced in the Senate by Finance Committee member Dean Heller, R-Nev., on January 8; but Finance Committee Chairman Orrin Hatch, R-Utah, has not announced plans to mark up that bill, nor has he indicated how he intends to address extenders provisions in general this year.

For its part, the White House has issued veto threats against both bills. In a statement of administration policy issued on April 14, the Obama administration argues that most taxpayers are already exempt from the estate tax as a result of the inflation-indexed exemption amounts in place under current law (\$10.86 million for joint filers and \$5.43 million for individuals in 2015). Repealing the estate tax would, in the administration's view, would primarily benefit only "the wealthiest one or two estates out of every thousand." The statement also notes that "[b]y retaining stepped-up basis even after repealing the estate tax, enactment of H.R. 1105 would not only add hundreds of billions of dollars to the deficit to provide huge tax cuts to the most fortunate, it would endorse the principle that the wealthiest Americans should not have to pay tax on certain forms of income at all." (The administration's fiscal year 2016 budget blueprint includes a proposal to eliminate stepped-up basis for appreciated assets at death, subject to certain exclusions. It also repeats a proposal from previous budget packages to restore the estate tax, GST, and gift tax parameters to those in effect in 2009 – a 45 percent top rate and unindexed exclusion amounts of \$3.5 million for estate and GST taxes and \$1 million for gift taxes. For details, see *Tax News & Views*, Vol. 16, No. 6, Feb. 6, 2015.)

[URL: https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr1105r_20150414.pdf](https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr1105r_20150414.pdf)

[URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150206_1.html](http://newsletters.usdbriefs.com/2015/Tax/TNV/150206_1.html)

In a separate policy statement, the White House contends that permanently extending the deduction for state and local income taxes without offsetting its cost "violates the very standard that House Republicans approved just last month in their budget resolution, which requires offsetting the cost of any tax extenders that are made permanent with other revenue measures."

[URL: https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr622r_20150414.pdf](https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr622r_20150414.pdf)

Taxpayer rights, IRS governance, tax-delinquent contractors

In other floor action this week, the House approved several measures reported out of the Ways and Means Committee related to, among other things:

- Taxpayer rights and protections when dealing with the Internal Revenue Service (H.R. 1058);
- Restrictions on the use of personal e-mail by IRS employees for official business (H.R. 1152);
- The treatment of organizations applying for tax-exempt status (H.R. 709, H.R. 1026, H.R. 1314);
- The process for determining tax-exemptions of organizations under section 501(c)(4) (H.R. 1295); and
- The gift-tax treatment of donations to tax-exempt organizations under sections 501(c)(4), 501(c)(5), and 501(c)(6) (H.R. 1104).

Each of these measures passed under an expedited procedure known as suspension of the rules, which requires a two-thirds majority for approval. 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](http://waysandmeans.house.gov/calendar/eventsingle.aspx?EventID=398223)

The House also approved under suspension of the rules a bill from the House Oversight and Government Reform Committee that would “prohibit the awarding of a contract or grant in excess of the simplified acquisition threshold unless the prospective contractor or grantee certifies in writing to the agency awarding the contract or grant that the contractor or grantee has no seriously delinquent tax debts” (H.R. 1562).

The chamber failed to approve an Oversight Committee bill that would make certain noncompliant taxpayers ineligible for federal employment (H.R. 1563). The vote tally – 266-160 – fell short of the two-thirds majority required for passage.

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House and Senate select budget negotiators

The House and Senate this week appointed members to serve on a bicameral conference committee charged with ironing out differences between the separate budget resolutions approved in each chamber last month.

House Republican conferees, who were selected April 14, include Budget Committee Chairman Tom Price of Georgia, Rep. Todd Rokita of Indiana, Rep. Mario Diaz-Balart of Florida, Ways and Means Committee member Diane Black of Tennessee, and Rep. John Moolenaar of Michigan. House Democrats selected to serve on the conference panel are Budget Committee ranking member Chris Van Hollen of Maryland, Rep. Gwen Moore of Wisconsin, and Rep. John Yarmuth of Kentucky.

Across the Capitol, the Senate on April 15 appointed Budget Committee Chairman Mike Enzi, R-Wyo., and the entire roster of that chamber’s budget writers to serve on the conference panel.

[URL: http://www.budget.senate.gov/republican/public/index.cfm/republican-members](http://www.budget.senate.gov/republican/public/index.cfm/republican-members)

As a result, Senate negotiators will outnumber House negotiators 22-8, and Republicans on the panel will outnumber Democrats 17-13. In reality, however, the conference committee is likely to revolve primarily around negotiations between the two Budget Committee chairman – Price and Enzi – along with GOP leadership from each chamber.

The panel is expected to hold a public hearing in the coming days.

Broadly similar plans

The chambers' respective budget plans are broadly similar in that they are designed to put the federal budget on a path to balance through major reductions in spending. The House blueprint, drafted by Budget Committee Chairman Price, would pare spending by almost \$5.5 trillion over the next decade in order to achieve a budget surplus by fiscal year 2024. The Senate plan, drafted by Budget Committee Chairman Enzi, 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 supplementary estimates of the so-called "dynamic" effects of certain bills on federal revenue and spending levels attributable to their impact on the broader economy. (The House adopted a different version of dynamic scoring in its rules package for the 114th Congress in January. For coverage see *Tax News & Views*, Vol. 16, No. 1, Jan. 9, 2015.)

[URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150109_1.html](http://newsletters.usdbriefs.com/2015/Tax/TNV/150109_1.html)

Both plans also call for revenue-neutral tax reform for businesses and individuals, but are light on supporting details. (For more information on the two budget blueprints, see *Tax News & Views* Vol. 16, No. 11, Mar. 20, 2015; for a recap of the floor votes on each chamber's budget resolution, see *Tax News & Views*, Vol. 16, No. 12, Mar. 27, 2015.)

[URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150320_2.html](http://newsletters.usdbriefs.com/2015/Tax/TNV/150320_2.html)

[URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150327_1.html](http://newsletters.usdbriefs.com/2015/Tax/TNV/150327_1.html)

Sticking points: But the two plans also contain differences that conference negotiators will have to resolve. Foremost among those are variations in the plans' proposed spending levels on nondefense discretionary programs, the amount of savings and policy specificity surrounding the budgets' suggested reforms to entitlement programs, and the committees to be charged with reporting legislation pursuant to each plan's "budget reconciliation" instructions. (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.)

The Senate-passed plan includes reconciliation instructions directed at two committees – the Finance Committee and the Health, Education, Labor, and Pensions Committee – ostensibly targeted at repealing the Patient Protection and Affordable Care Act of 2010 (PPACA) and related provisions of the Health Care and Education Reconciliation Act of 2010, including the revenue increases enacted in those laws. The House-passed plan, meanwhile, includes instructions directed at 13 committees, including those that have jurisdiction over tax and health policy.

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.

Soft deadline for joint budget resolution slips

Lawmakers have missed a deadline enacted under the Congressional Budget and Impoundment Control Act of 1974 that directs Congress to adopt a budget resolution by April 15 of each year. That deadline is nonbinding, however, and missing it – which has also happened in other years since the 1974 legislation became law – does not preclude Congress from adopting a budget, or utilizing any reconciliation instructions that resolution may include.

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. (Once a budget resolution is adopted, any legislation that Congress approves pursuant to that resolution, including a reconciliation bill, could, of course, be subject to a presidential veto.)

Still, a congressional budget resolution is in itself 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.)

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Business groups unsupportive as Ryan, Hatch seek ideas for addressing passthroughs in corporate-only tax reform

The chairmen of the two congressional taxwriting committees this week reached out to members of a tax reform advocacy group to solicit ideas for reducing effective tax rates for small businesses as part of a business-focused tax reform plan that would not lower marginal tax rates for individual filers; but the group's leaders, along with several other small business organizations, replied that they could not support such an approach.

Chairmen's letter

In a letter reportedly sent to individual members of the Coalition for Fair Effective Tax Rates (CFETR) on April 13, House Ways and Means Committee Chairman Paul Ryan, R-Wis., and Senate Finance Committee Chairman Orrin Hatch, R-Utah, state their commitment to comprehensive tax reform that reduces tax rates for individuals and corporations, whether that takes "one bill or multiple pieces of legislation."

URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150417_3suppA.pdf

But Ryan and Hatch also explain that the White House supports a corporate-only approach to reform and that "[w]ith President Obama unwilling to reduce individual statutory tax rates, it is likely that some aspects of tax reform will not be completed until the next administration takes office." Ryan and Hatch stress, however, that they believe significant progress on tax reform is

possible this year and that they “cannot afford to wait” until 2017 to address the corporate rate and international competitiveness concerns.

“If President Obama is willing to help us achieve a first phase of tax reform focused in part on business income, we owe it to American workers and their families to see if we can find common ground,” they write.

The two taxwriting leaders emphasize that they will not “leave behind” businesses organized as passthroughs – whose owners pay tax on business income at individual rates – and ask for ideas that they can implement now, while waiting to reduce statutory rates on individuals after the next election. They express specific interest in “ideas on how to reduce the effective tax rate without reducing the statutory rates in a manner that will make small business more competitive and better able to invest, grow, hire, and increase wages for their employees.”

The letter requests that suggestions be submitted by May 31.

Response

In a reply dated April 15, CFETR, joined by several small business associations, states that it cannot support Ryan and Hatch’s suggested approach. The coalition notes that it was formed to ensure that tax reform is comprehensive and gives all businesses “a fair shake” and stresses that reform must achieve parity in effective tax rates between C corporations and passthrough entities. “Effective tax rate parity cannot be achieved if the tax rate on C Corporations is reduced by nearly 30 percent giving them a 15 point advantage over passthrough entities,” the letter says.

[URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150417_3suppB.pdf](http://newsletters.usdbriefs.com/2015/Tax/TNV/150417_3suppB.pdf)

According to CFETR, “no combination of credits, deductions, or exclusions will bring about tax rate parity and produce a fair, simple, transparent and pro-growth tax code.”

Hearings

Members of the small business community expressed similar sentiments at separate hearings held by the congressional Joint Economic Committee (JEC) and the House Small Business Committee on April 15 to address issues related to small business and tax reform. (The two committees do not have jurisdiction over tax legislation.)

Representatives of the National Federation of Independent Business (NFIB), which signed the CFETR letter, and the S Corporation Association of America, told both panels that tax reform must be comprehensive.

Scott Lipps of Sleep Tite Mattress in Ohio, who spoke on behalf of NFIB at the Small Business Committee hearing, said that tax reform must lower the rate, provide parity for corporate and individual rates, and simplify the system.

JEC chairman and Senate Finance Committee member Dan Coats, R-Ind., agreed with similar testimony presented to his committee. “[W]hile it is urgent and essential to lower our corporate tax rate, which is the highest in the developed world, we must not forget the millions of small

businesses that pay taxes at the individual level and have just experienced rate increases of their own,” Coats said.

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