Deloitte.

Tax

Tax News & Views

May 1, 2015

In this issue:

Budget conference report passes House

The House of Representatives on April 30 approved a budget resolution that sets discretionary spending levels for fiscal year 2016 and also lays out total revenue and spending targets for the next 10 years with an eye toward putting the federal budget on a path to surplus by 2024. The Republican-drafted plan passed by a vote of 226-197, with no support from Democrats. (Fourteen Republicans joined Democrats in the "no" column.)

The budget resolution is the product of a conference committee led by House Budget Committee Chairman Tom Price, R-Ga., and Senate Budget Committee Chairman Mike Enzi, R-Wyo., which was formed to iron out differences between the separate budget blueprints passed by the two chambers in March. (For prior coverage of the conference committee negotiations, see *Tax News & Views*, Vol. 16, No. 14, Apr. 24, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150424_1.html

The Senate is expected to take up the conference report the week of May 4. If approved in that chamber, it would be the first budget resolution adopted by Congress since the fiscal year 2010 blueprint that cleared the House and Senate in April 2009. (The fiscal deal brokered in 2013 by then-Budget Committee chairs Rep. Paul Ryan, R-Wis., and Sen. Patty Murray, D-Wash., was not a budget resolution but rather a law signed by the president that lifted the statutory caps on discretionary spending known as the "sequester" in exchange for savings generated elsewhere in the budget.)

It is important to note that even if Senate Republicans clear the conference agreement and a congressional budget is adopted, the measure would not go to President Obama for his signature (or veto) and would never become law, although any legislation that Congress approves pursuant to that resolution – for example, appropriations bills or a reconciliation bill – could, of course, be subject to a presidential veto.

Conference report details

The conference report, which Rep. Price and Sen. Enzi unveiled on April 29, is broadly similar to the two budget plans they sought to reconcile. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 11, Mar. 20, 2015.) Like those earlier plans, the Price-Enzi agreement would cut more than $5 trillion in spending over the next decade in order to reach balance within the 10-year budget window without raising taxes relative to the "current law" revenue baseline against which the plan is measured.
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150320_2.html

Deal includes House policy statements on tax reform, extenders: The agreement includes a policy statement from the House-passed plan that calls on Congress to pursue revenue-neutral tax reform that reduces rates for both individuals and corporations, and another that argues in favor of amending the Congressional Budget and Impoundment Control Act of 1974 to require that proposed permanent extensions of temporary tax provisions (the so-called "tax extenders") be measured against an alternative baseline that already assumes their extension (and therefore does not require budget offsets).

'Dynamic' scoring language included: Similar to the Senate budget resolution, the conference agreement also includes language directing the Joint Committee on Taxation (JCT) and the Congressional Budget Office (CBO) 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. Under conventional "static" scoring methods, JCT and CBO incorporate into their cost estimates anticipated behavioral changes at the firm and individual level, but do not factor in the budget effects of anticipated changes in the macro economy.

The provision generally would apply to revenue and direct spending (i.e., entitlement) bills that are projected to have a conventional budget effect of at least 0.25 percent of gross domestic product in any fiscal year. According to the conference report, in the Senate, these dynamic estimates would be provided for informational purposes only. This differs from a rule adopted by the House earlier this year that requires the dynamic effects of certain major legislation considered in that chamber to be incorporated into budget scorekeepers' official scores. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 1, Jan. 9, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150109_1.html

'Reconciliation' instructions narrowed: The Price-Enzi agreement substantially narrows – from 13 to 3 – the roster of House committees to be charged with reporting legislation pursuant to the 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 final deal includes reconciliation instructions to two Senate committees (the Finance Committee and the Health, Education, Labor, and Pensions Committee) and three House committees (the Ways and Means Committee, the Energy and Commerce Committee, and the Committee on Education and the Workforce) – all of which have jurisdiction over the policies included in the Patient Protection and Affordable Care Act (PPACA) and related provisions of the Health Care and Education Reconciliation Act of 2010. Although the budget agreement calls for repeal of both laws, it is important to note that the reconciliation instructions in the conference report cannot dictate the policies to be included in reconciliation legislation approved by the authorizing committees. Thus, the instructions are broad enough that reconciliation potentially could be used for myriad purposes, including addressing the potential fallout that may result if the US Supreme Court decides in *King v. Burwell* that tax subsidies under the PPACA are available only on state-based exchanges. The only *binding* requirement placed on each committee is that it report legislation by July 24, 2015, that on net reduces the deficit by $1 billion over 10 years.

Revenue levels slightly higher: The revenue levels in the Price-Enzi agreement are consistent with those projected by the Congressional Budget Office (CBO) in March as part of an update to its annual Budget and Economic Outlook originally published in January. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 4, Jan. 30, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150130_4.html

The original House and Senate budget resolutions followed CBO's January revenue numbers; however, revenues in the March update were higher by roughly $80 billion over 10 years (due to technical and economic factors), so the conference report was amended to include those updated figures.

CBO's revenue projections customarily assume that current laws remain unchanged. As a result, the budget agreement includes revenue associated with the expiration of the so-called "tax extenders," which most recently lapsed at the end of 2014, as well as revenue from provisions in the 2010 health care reform laws. This has prompted Democrats to argue that the revenue assumptions in the budget agreement are at odds with House Republican efforts this year to move legislation that would make several tax extenders permanent without offsetting their cost and the budget's nonbinding call to fully repeal the health care reform laws (including the revenue increases enacted as part of those laws).

Budget's likely passage won't prevent future fiscal fights

Even if Senate Republicans pass the budget conference report as expected and a congressional budget is adopted, House and Senate Republicans and President Obama remain far apart on their fiscal priorities. The president, for example, has vowed to veto fiscal year 2016 appropriations bills that do not increase discretionary spending above "sequester" levels; but the Price-Enzi agreement calls for sequester-level spending in 2016 for nondefense programs – and even lower levels in future fiscal years. The breach has led to speculation among some observers that another fiscal deal similar to the Ryan-Murray agreement may be required in order to avert a government shutdown on October 1 when fiscal year 2016 begins.

— Alex Brosseau
Tax Policy Group
Deloitte Tax LLP

Ways and Means to push for 'limited' corporate reform, permanent extenders this summer, Ryan says

House Ways and Means Chairman Paul Ryan, R-Wis., said April 30 that his panel would work on tax reform this summer and would continue the push to make many of the so-called tax extenders permanent.

Speaking at *Christian Science Monitor* breakfast in Washington, Ryan said he hopes to move "limited" tax reform this summer – particularly with respect to the corporate rate – that would serve as the basis for comprehensive reform in 2017 if the GOP wins the White House in the next presidential election.

Extenders

Ryan also said he hopes Congress can finish the effort to make permanent many of the temporary tax deductions, credits, and incentives that expired at the end of last year, but suggested that if an agreement on permanent extenders is not possible as part of a limited tax code overhaul, lawmakers should move a separate extenders package in the fall.

"Extenders can be either part of a limited tax reform package this summer, or if we just can't come together with the administration on that, then we immediately move to extenders and do those as early in the fall as possible so we can give people time to prepare," Ryan said.

Since the 114th Congress convened in January, the House has approved – without offsets – permanent extensions of the deduction for state and local general sales taxes in lieu of the deduction for state and local income taxes, increased small-business expensing limits under section 179, tax relief provisions targeting S corporations, and tax incentives to promote charitable giving. Legislation to permanently extend the research and experimentation credit has been approved in the Ways and Means Committee and awaits action on the House floor.

The House-passed measures have not yet been taken up in the Senate, however, and have been subject to veto threats by the White House. Ryan indicated that his panel may move additional permanent extenders bills in the coming months. (Like former Ways and Means Committee Chairman Dave Camp, R-Mich., Ryan has argued that approving permanent, unoffset extensions of provisions that have bipartisan support paves the way for tax reform by embedding them in the code and creating a more realistic picture of the budget baseline.)

For his part, Ways and Means Committee member Erik Paulsen, R-Minn., said during a Bloomberg Government webcast later on April 30 that he agrees with Ryan's approach on extenders. Paulsen said businesses want certainty and predictability and that they "don't budget for two weeks or retroactively" – a reference to the one-year retroactive extenders legislation that was enacted into law last December only to expire a scant two weeks later. When asked by reporters why smaller business provisions have not been included in the Republican calls for permanence, Paulsen responded that Ways and Means was focused on those that showed the most potential for boosting economic growth.

Repatriation not an option for highway spending

Ryan told reporters at the *Christian Science Monitor* breakfast that he would not pursue proposals floated by the White House and some lawmakers to use proceeds from a one-time repatriation of foreign earnings to replenish the rapidly dwindling Highway Trust Fund, saying a repatriation program does not make sense outside the context of tax reform. (Senate Finance Committee Chairman Orrin Hatch, R-Utah, who, like Ryan, objects to using repatriation to fund infrastructure spending, released a memorandum from the Joint Committee on Taxation staff on April 30 which estimated that a temporary repatriation holiday proposed by Sens. Rand Paul, R-Ky., and Barbara Boxer, D-Calif., would reduce federal revenues by nearly $118 billion over 10 years.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150501_2suppA.pdf

Republican lawmakers plan to introduce a short-term highway funding bill soon, Ryan said. Although he provided no details on what revenue provisions that measure might include, he did rule out the possibility of an increase in the federal gas tax.

The current authorization for the Highway Trust Fund expires on May 31.

Finance leaders post public comments to tax reform working groups

In other developments, Senate Finance Committee Chairman Hatch and ranking member Ron Wyden, D-Ore., announced April 29 that they have posted on the committee's Web site some 1,400 public comments submitted to the panel's tax reform working groups examining issues related to the individual income tax, business income tax, savings and investment, international tax, and community development and infrastructure.
URL: http://www.finance.senate.gov/legislation/details/?id=CFD27F04-5056-A032-52B0-B94A2BBAD764
URL: http://www.finance.senate.gov/legislation/details/?id=33FD5BC7-5056-A032-52BF-BFA29E8C6554
URL: http://www.finance.senate.gov/legislation/details/?id=341b7966-5056-a032-5248-2a67ae65e9a2
URL: http://www.finance.senate.gov/legislation/details/?id=34184F67-5056-A032-52C8-0A4960018D92
URL: http://www.finance.senate.gov/legislation/details/?id=3401855D-5056-A032-5232-EDEA66B64E9E

Hatch and Wyden formed the five bipartisan working groups in January to analyze current law in discrete areas in tax reform, consider policy trade-offs and available reform options, and develop recommendations and potential legislative solutions to address them. They issued a call for comments by individuals, businesses, organizations, and advocacy groups in March and set a deadline of April 15 for submissions.
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150206_3suppA.pdf

In a news release, Hatch and Wyden stated that the comments from the public "have equipped us with the ability to better evaluate how reforming the tax code will affect both American families and business of all kinds. As our bipartisan groups work towards producing substantive recommendations on how to reform the tax code, they will now be able to consider these valuable ideas."

According to a calendar distributed to Finance Committee members and staff, the working groups are scheduled to take the month of May to prepare reports outlining their findings and recommendations. Those reports are due to Hatch and Wyden by May 25 and could become the foundation for an eventual Finance Committee tax reform bill. Hatch has stated that "it

would be best if [the groups] can produce legislative text," but noted that it is not a requirement.
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150227_1suppB.pdf

— Jon Almeras
Tax Policy Group
Deloitte Tax LLP

Senate taxwriters OK expanded section 529 benefits

The Senate Finance Committee voted 26-0 on April 29 to approve legislation (S. 335) sponsored by taxwriter Charles Grassley, R-Iowa, that would liberalize the current-law rules governing section 529 savings plans for higher education expenses by clarifying that computers, computer equipment, and Internet access are qualified expenses for section 529 account funds and permitting plan holders to redeposit amounts refunded from colleges without taxes or penalties under certain circumstances. In the case of a section 529 plan beneficiary who receives distributions from multiple accounts in a taxable year, the legislation also would eliminate the current-law requirement that the earnings portion of those distributions be determined by aggregating accounts.

The provision treating computers as a qualifying section 529 expense would be effective for taxable years beginning after December 31, 2014; the provision allowing plan holders to redeposit certain refunds from colleges without taxes or penalties would be effective for amounts refunded after December 31, 2014; and the provision eliminating aggregation requirements in the case of multiple distributions for a plan beneficiary in a taxable year would be effective for distributions made after December 31, 2014.

Several proposed Democratic amendments aimed at further refining the section 529 rules and enhancing other current-law education tax incentives were rejected along party lines.

The Joint Committee on Taxation staff estimates the legislation, which does not include revenue offsets, would reduce federal receipts by $51 million over 10 years.

Next steps

S. 335 now heads to the full Senate for consideration, although Majority Leader Mitch McConnell, R-Ky., has not yet indicated when it will be brought to the floor.

The House of Representatives approved substantially similar legislation (H.R. 529) on February 25 by a vote of 401-20. That bill was introduced in late January after President Obama announced that he intended to include a proposal in his fiscal year 2016 budget blueprint that would eliminate the tax-free treatment of certain withdrawals from section 529 plans to pay for a permanent and expanded version of the American Opportunity Tax Credit and other education-related spending targeted to middle-income taxpayers. The president's proposal drew criticism from congressional Republicans as well as some high-profile

Democrats and was subsequently withdrawn. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 4, Jan. 30, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150130_5.html

The administration has not released an official policy statement on the House-passed bill or the Finance Committee measure. In remarks to reporters about H.R. 529 on February 25, however, White House Press Secretary Josh Earnest stated that the administration would not oppose the legislation, although it believes "that there is a whole lot more that we can do that would be a whole lot more effective and more fiscally responsible to ensure that we're opening up a college education to even more middle-class families."

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

Have a question?
If you have needs specifically related to this newsletter's content, send us an email at clientsandmarketsdeloittetax@deloitte.com to have a Deloitte Tax professional contact you.