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Senate approves budget conference report

The Senate on May 5 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 resolution cleared the House of Representatives on April 30.)

The Republican-drafted plan passed by a vote of 51-48, with no support from Democrats. Two Republicans – Sens. Ted Cruz of Texas and Rand Paul of Kentucky – voted against the plan on the grounds that it did not shrink deficits quickly enough. Both Cruz and Paul have announced that they are seeking the GOP nomination for the presidency in 2016.

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 plans 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

Passage of the fiscal blueprint in both chambers represents the first budget resolution adopted by Congress since the fiscal year 2010 plan 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.)

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Importantly, a congressional budget resolution does not go to the president for his signature (or veto) and never becomes law, although any legislation that Congress approves pursuant to the 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

Tax reform, extenders, dynamic scoring: The agreement includes a nonbinding policy statement expressing support for revenue-neutral tax reform that lowers rates for both individuals and corporations, and another supporting the permanent, unoffset extension of unspecified temporary tax provisions (the so-called "tax extenders"). The plan also includes language directing congressional budget scorekeepers to produce estimates of the "dynamic" effects of certain bills on federal revenue and spending levels attributable to their impact on the broader economy. (For additional details, see *Tax News & Views*, Vol. 16, No. 15, May 1, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150501_1.html

Reconciliation instructions: Perhaps most important with respect to near-term legislative activity, however, is 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 panels (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 conference report suggests that both laws should be repealed through budget reconciliation, it is important to note that, under the rules governing the process, reconciliation instructions in the budget cannot dictate the policies to be included in subsequent 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* provision requires each committee to report legislation by July 24, 2015, that on net reduces the deficit by $1 billion over 10 years.

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Future fiscal fights remain possible

Despite the adoption of a budget resolution – a rarity in recent years – congressional Republicans and President Obama remain far apart on their fiscal priorities. For example, the budget plan released by the White House earlier this year envisioned total federal revenues over the next 10 years of about $44.7 trillion – nearly $3 trillion higher than the roughly $41.8 trillion included in congressional Republicans' budget plan. Although some of the variance reflects differences in economic assumptions – for example, the White House projects higher levels of gross domestic product throughout the budget window – the tax policy gulf nonetheless remains wide. (For details on the tax proposals in the president's budget blueprint for fiscal year 2016, see *Tax News & Views*, Vol. 6, No. 6, Feb. 6, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150206_1.html

The president has also 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 of 2013, may be required in order to avert a government shutdown on October 1 when fiscal year 2016 begins.

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Tax reform working group recommendations may remain secret, Hatch says

Recommendations from the five bipartisan working groups the Senate Finance Committee convened earlier this year to study tax reform issues may not be publicly released, according to comments by Chairman Orrin Hatch, R-Utah.

The groups, which Hatch and Finance Committee ranking member Ron Wyden, D-Ore., created in January, are tasked with developing legislative proposals in their respective issue areas – individual income tax, business income tax, savings and investment, international taxation, and community development and infrastructure. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 2, Jan. 16, 2015.) As part of their work, the groups solicited public comments, which were recently posted to the Finance Committee's Web site. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 15, May 1, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150116_1.html
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150501_2.html

According to a schedule circulated among Finance Committee members and staff, the working groups are to submit their recommendations to Hatch and Wyden at the end of this month. But Hatch indicated on May 5 that he had not made up his mind about whether he will share details of the working groups' final reports with the public.

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"I don't know that we want to go to that step," he told *Politico*. "The purpose is to help us in the committee" and "right now, we're keeping them under control."

International working group discusses patent box

In other developments, members of the five working groups began a series of closed-door sessions this week in which they briefed members of the full Finance Committee about their work to date. (Additional briefings are planned for the week of May 11.)

According to press reports, the international working group devoted much of its May 5 briefing session to the idea of a so-called patent box. These mechanisms, which have been adopted in countries like the UK and the Netherlands, generally provide a low tax rate for income derived from research and development activities and are intended to stimulate domestic research jobs and discourage companies from moving their intellectual property offshore.

The co-chairs of the international working group, Sen. Rob Portman, R-Ohio, and Sen. Charles Schumer, D-N.Y., are both seen as favoring adoption of a US patent box. Schumer argued during a March 17 Finance Committee hearing on international tax reform that nexus requirements being introduced for European patent boxes would pull high-dollar research and development activities and jobs out of the United States – a situation that he said "should be a wake-up call" to Congress. (For additional details, see *Tax News & Views*, Vol. 16, No. 11, Mar. 20, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150320_1.html

For his part, Portman, in a statement reported in the *Wall Street Journal* on May 6, said that without a patent box, the United States was at a competitive disadvantage. "By standing still, the US is falling behind and it is US workers and wages that suffer," he said.

Other members of the committee fear that enacting a special regime may take the focus off broader tax reform, however. Finance Committee member John Thune, R-S.D., told the *Journal* that a patent box would be part of the discussion "[b]ut it is still not a substitute for the ultimate goal, which is lower rates."

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Bill would mandate disclosure of tax treatment of settlements between taxpayers and federal agencies

The Senate Homeland Security and Governmental Affairs Committee approved legislation on May 6 that would, among other provisions, require public disclosure of information regarding the tax treatment of nonconfidential civil and criminal settlement agreements reached between taxpayers and federal agencies that involve more than $1 million in payments.

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Disclosure details

The Truth in Settlements Act of 2015 (S. 1109), which is sponsored by Sens. James Lankford, R-Okla., and Elizabeth Warren, D-Mass., was approved by voice vote. Notable tax-related provisions applicable to nonconfidential settlements would:

- Require federal agencies to specify in any written public statement that refers to a settlement amount (1) the portion of that amount that is expressly identified in the settlement agreement as a civil or criminal penalty or fine or (2) the portion that is expressly identified as not deductible for federal income tax purposes.
- Require federal agencies to post on their Web sites basic information about each settlement agreement they enter into – including the extent to which a settlement amount is nondeductible. Agencies also would be required to post copies of their settlement agreements.
- Require companies that settle with enforcement agencies to state in their filings with the Securities and Exchange Commission whether they have deducted any settlement payments from their taxes.

Confidential settlements

In the case of a confidential settlement, the legislation would require federal agencies to explain why an agreement was deemed confidential and to submit an annual report to Congress providing aggregate statistics on all such agreements. It also would direct the Government Accountability Office to examine how, and to what extent, agencies determine that settlements are confidential, and whether there are ways to make that process more transparent.

Next steps

The legislation has been referred to the full Senate, although it is currently unclear when (or whether) Majority Leader Mitch McConnell, R-Ky., intends to bring it to the floor.

A substantially similar bill sponsored by Warren and then-Sen. Tom Coburn, R-Okla., cleared the Homeland Security and Governmental Affairs Committee in 2014, when the Senate was under Democratic control, but never received a floor vote.

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