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Consensus on long-term funding source for highways remains elusive

Congressional taxwriters this week appeared no closer to consensus on a long-term revenue source for the Highway Trust Fund as the House Ways and Means Select Revenue Measures Subcommittee held a hearing to explore the idea of linking a so-called "deemed repatriation" provision to highway spending and the Senate Finance Committee convened its own hearing to examine how states have used public-private partnerships to finance infrastructure projects.

Spending authority for the Highway Trust Fund has been maintained under a series of short-term extensions, the latest of which is set to expire on July 31. Although there is broad agreement that a six-year highway bill would be optimal for planning and certainty, a long-term fix would require additional trust fund receipts beyond those projected under current law. The Congressional Budget Office recently estimated that lawmakers would need to find an additional $85-90 billion to pay for a six-year bill that maintains current spending levels.
URL: http://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/SanderLevinHTFLetter.pdf

Deemed repatriation

Taxwriters at a Ways and Means Select Revenue Measures Subcommittee hearing on June 24 generally agreed that deemed repatriation – a one-time levy on foreign-source income of domestic multinationals that has not already been taxed in the United States – should be included as a transition rule in an international tax reform plan that includes a territorial regime; but opinions diverged on the idea of pairing repatriation – whether deemed or elective – with infrastructure spending, even if the repatriation is linked to broader reforms of US international tax rules. (Ways and Means Committee Chairman Paul Ryan, R-Wis., has explicitly rejected calls to pay for highway spending through a stand-alone tax on repatriated foreign earnings but has expressed interest in the idea of linking deemed repatriation to other international reforms as part of a long-term highway bill this year.)

Select Revenue Measures Subcommittee Chairman Dave Reichert, R-Wash., emphasized in his opening statement that “repatriation cannot be done as a stand-alone; it must be part of a transition to a more competitive system. …[T]aken outside of the context of a transition, mandatory repatriation would be a tax increase. A tax increase that American companies would be forced to pay unlike their foreign competitors.”

Others in the GOP caucus agreed. Rep. Pat Tiberi, R-Ohio, said that “going to an exemption system is critical” and Rep. Erik Paulsen, R-Minn., likewise emphasized the need to tie deemed repatriation to international reform.

Curtis Dubay of the Heritage Foundation told the subcommittee that repatriation as a stand-alone would be bad policy, and that it had to be used as a transition to a territorial system. He and other witnesses at the hearing noted that the Highway Trust Fund has traditionally followed a “user pays” funding system with gas taxes, which Jane Gravelle of the Congressional Research Service explained that many economists think is good policy.

Paulsen pressed witnesses on whether the current US international tax rules put domestic companies at a competitive disadvantage. Dubay said that they do, citing inversion activity as evidence that foreign residency was considered more valuable because of the tax consequences. However, he added that US companies are now more likely to just be acquired by foreign companies rather than invert.

Concerns about repatriation and highways: Despite the agreement on the need to move to a territorial tax system, some Republicans were cool to the idea of linking repatriation to infrastructure spending. Rep. Todd Young, R-Ind., said he was opposed to a one-time repatriation for this purpose. Rep. Mike Kelly, R-Pa., said he was concerned about using repatriation because it would only provide six years of highway funding.

Democrats had concerns of their own. Many, including subcommittee ranking member Richard Neal, D-Mass., argued that the repatriation holiday enacted under the American Jobs Creation Act of 2004 resulted in job cuts by the companies that participated in the program.

Rep. Linda Sanchez, D-Cal., said repatriation was not a viable solution for needed infrastructure spending.

Taxwriter Lloyd Doggett, D-Texas, who is not a member of the subcommittee but sat in on the hearing, noted that several business groups – including the National Association of Manufacturers, the Business Roundtable, the RATE Coalition, and the Alliance for Competitive Taxation – had all issued statements against using repatriation for highways.

How to score?: Reichert asked Joint Committee on Taxation (JCT) Chief of Staff Thomas Barthold about how much revenue a deemed repatriation proposal could be expected to generate. Barthold replied that a revenue estimate would depend significantly on how the proposal was designed, noting issues about rates, the treatment of cash and noncash assets, and the length of the installment period for paying the tax. (In conjunction with the hearing, the JCT released a report discussing present law and selected proposals related to the repatriation of foreign earnings.)
URL: https://www.jct.gov/publications.html?func=startdown&id=4795

Neal asked what percentage of unrepatriated assets are currently being held in cash. Gravelle noted a Credit Suisse report that estimated it might be as high as 50 percent. Barthold said it was probably around 45 percent, but added that questions around issues such as the treatment of working capital, amounts held under foreign-law bank capital requirements, and portfolio holdings would affect how this percentage was calculated.

Rep. Mike Thompson, D-Cal., asked whether it would be considered “double counting” to use deemed repatriation both to pay for international reforms and replenish the Highway Trust Fund. Gravelle replied that it was effectively double counting as scored in a similar proposal included in the tax reform discussion draft that then-Ways and Means Committee Chairman Dave Camp, R-Mich., unveiled in 2014, but Barthold said that the JCT reports estimates on a unified basis. (In the case of highway construction programs, congressional scoring rules assume that current spending levels will continue, so changes to the law that ensure sufficient funds are available to meet those obligations are not counted as additional spending. As a result, under congressional budgeting rules, taxwriters can raise revenue – through enactment of deemed repatriation, for example – that is notionally credited to the Highway Trust Fund but that is also used to reduce other taxes – such as a move to a territorial system. This scoring convention is likely to be a flash-point between the parties if Ways and Means Chairman Ryan and his colleagues pursue the idea of pairing international tax reforms with a long-term highway bill.)

Public-private partnerships

Across the Capitol, the Senate Finance Committee on June 25 continued its own discussion of transportation issues with a hearing focused on ways states have engaged the private sector to help finance infrastructure projects, such as through entering into public-private partnerships and issuing tax-preferred bonds. (In preparation for the hearing, the JCT published a report providing background on certain arrangements designed to draw private capital into transportation infrastructure projects, including their federal tax treatment.)
URL: https://www.jct.gov/publications.html?func=startdown&id=4796

The hearing followed a separate meeting of the committee on June 18, during which members discussed federal transportation finance in general terms. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 21, June 19, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150619_1.html

Stable revenue source for Highway Trust Fund critical: Finance Committee Chairman Orrin Hatch, R-Utah, explained in his opening statement that while transportation financing methods such as public-private partnerships and tax-preferred infrastructure bonds are a critical component of infrastructure finance as a whole, they do not diminish the need for lawmakers to identify a stable, long-term revenue source for the Highway Trust Fund.

“At the outset, I want to make sure it is clear that, while they are important, these financing alternatives and ideas are not meant to address the immediate shortfall in the Highway Trust Fund. As long as our federal highway program is based upon reimbursements to states made on a formula basis, there is no workable substitute for federal funding,” Hatch said.

Sen. Mark Warner, D-Va., agreed that innovative financing techniques cannot replace an adequate and dedicated federal funding source for infrastructure.

“Financing is great, but we’ve got to have funding as well,” Warner noted.

Warner is author of the Building and Renewing Infrastructure for Development and Growth in Employment (BRIDGE) Act (S.1589), which would establish a federal infrastructure bank that he said would leverage a $10 billion initial investment by the federal government into $300 billion in infrastructure projects through low-interest loans and loan guarantees.
URL: http://www.warner.senate.gov/public/index.cfm/pressreleases?ContentRecord_id=16cdfd20-4d06-4afc-936b-7eb67ad992d7

User-pay issues: Former Republican Indiana Gov. Mitch Daniels, now president of Purdue University, testified primarily on Indiana’s positive experience with funding infrastructure projects through public-private partnerships. However, in an exchange with Sen. Tom Carper, D-Del., an outspoken advocate of increasing the federal gas tax, Daniels expressed his view that users of transportation systems should pay more in order to put infrastructure funding streams on a more stable footing.

“I think the fairest and most efficacious way is a major expansion of user fees and tolling. There’s nothing novel about it. It’s more equitable, and it’s more flexible. …I think it’s the single biggest opportunity,” Daniels said.

However, congressional leaders have eschewed any near-term increase in the 18.3 cent-per-gallon federal gas tax due to a lack of political consensus.

Wyden touts tax credit bonds: Finance Committee ranking Democrat Ron Wyden of Oregon – a strong advocate of the now-expired Build America Bonds (BABs) program, focused his remarks on how federal tax credit bonds can leverage private capital for transportation infrastructure projects. The BABs program, authorized by the American Recovery and Reinvestment Act of 2009, allows – in lieu of an exemption for interest income – a 35 percent payment to the issuer to offset borrowing costs. Alternatively, BABs could be structured so bond holders claim a credit equal to 35 percent of interest income received. The authority to issue new BABs expired at the end of 2010.

Earlier this year, Wyden introduced the Move America Act (S.1186), which would expand qualified private activity bonds for infrastructure and allow the authority to issue such bonds to be converted into tax credits that states could sell or allocate to project sponsors, who themselves could sell the credits to raise capital.
URL: http://www.finance.senate.gov/imo/media/doc/The%20Move%20America%20Act%20-%20Section%20by%20Section.pdf

More alternatives from infrastructure working group?: Senate taxwriters may get additional ideas on long-term highway funding when the Finance Committee’s tax reform working group addressing community development and infrastructure issues releases its recommendations for overhauling the tax code. Although all five of the bipartisan working groups were expected to submit their recommendations to Finance Committee leaders on

June 26, a committee spokesperson confirmed that the deadline has been moved to early July after lawmakers return from the Independence Day recess.
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150206_3suppA.pdf

This marks the second deadline extension the working groups have received. The original due date for recommendations was May 31, but that was bumped to the end of June after several co-chairs indicated that they needed additional time to develop consensus within their groups. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 19, June 5, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150605_1.html

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Tax-related trade legislation heads to White House

President Obama's stalled trade agenda got a jump-start this week as Congress approved and sent to the White House two repackaged trade bills that include assorted tax provisions and moved toward beginning conference negotiations on a third.

The two approved trade bills are expected to be signed into law quickly.

Trade measures had dominated the debate in the House and Senate in late May and early June, and both chambers appeared to be moving toward agreement on issues related to trade preferences (H.R. 1295) and trade facilitation and enforcement (H.R. 644). But the process ran aground when the House was unable to move Senate-passed legislation (H.R. 1314) that would extend trade adjustment assistance and provide for trade promotion authority, leaving congressional leaders to consider a new path forward. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 20, June 12, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150612_4.html

Trade preferences, trade adjustment assistance

The House voted 286-138 on June 25 to approve a new version of H.R. 1295 that combines the extension of trade preferences that cleared the House on June 11 with a trade adjustment assistance title. Senate passage of H.R. 1295 came by voice vote a day earlier.

On the tax side, the measure would renew the Health Coverage (HCTC) through 2019, retroactive to December 31, 2013. The HCTC was first enacted in 2002 and provides a refundable tax credit covering 72.5 percent of health insurance premium costs for certain individuals who became unemployed because their jobs moved offshore or who receive benefits from the Pension Benefits Guaranty Corporation. It expired at the end of 2013 and was not renewed in the extenders legislation that was enacted late last year. The Joint Committee on Taxation (JCT) staff has estimated that the provision would increase the deficit by $173 million over 10 years.
URL: https://www.jct.gov/publications.html?func=startdown&id=4775

Revenue offsets in the legislation would:

- Deny the additional child tax credit (ACTC) – the refundable portion of the child tax credit – to taxpayers who elect the foreign earned income exclusion under section 911, which allows US citizens and US resident aliens living abroad to exclude a specified amount of foreign earnings (up to $100,800 in 2015, indexed annually for inflation) from gross income for US tax purposes. (According to a Senate Finance Committee staff summary, the interaction of the foreign earned income exclusion and the ACTC under current law "can lead to the unintended consequence that taxpayers earning six-figure incomes and who have no tax liability receive a check from the government for the ACTC because they appear to have low earned income.") This provision would conform treatment of the ACTC to current-law treatment of the refundable portion of the earned income tax credit. (JCT 10-year deficit-reduction estimate: $293 million.)
  URL: https://www.jct.gov/publications.html?func=startdown&id=4775
- Require taxpayers to submit a payee statement in order to claim the American Opportunity Tax Credit, the Hope Scholarship Credit, the Lifetime Learning Credit, and the deduction for tuition expenses. (JCT 10-year deficit-reduction estimate: $576 million.) A special rule would waive the penalty that applies to an educational institution that fails to file information returns with accurate taxpayer identification numbers (TINs) of students attending the educational institution if the institution certifies, under penalty of perjury, that it properly requested TINs from students as required under Treasury regulations.
  URL: https://www.jct.gov/publications.html?func=startdown&id=4788
- Increase penalties under the current-law tiered penalty structure that applies to taxpayers who fail to file correct information returns (e.g., IRS Form 1099) with the IRS as well as the separate, but parallel, penalties that apply to taxpayers who fail to provide a payee with a correct copy of the information return filed with the IRS. The penalty tiers are based on the duration of the delinquency, the size of the taxpayer, and the taxpayer's intent. (JCT estimated 10-year revenue gain: $136 million.)
  URL: https://www.jct.gov/publications.html?func=startdown&id=4788
- Increase estimated tax payments by large corporations (those with assets over $1 billion) due in July, August, or September of 2020 by 8 percent of the amount otherwise due and reduce the next estimated tax payment by the same amount. (This consolidates into one provision an increase in estimated tax payments of 5.25 percent for the third quarter of 2020 that was included in previous versions of H.R. 1295 and an increase of 2.75 percent for the same period that was included in the trade adjustment assistance title of H.R. 1314.) This provision would be revenue neutral over 10 years. (It was included to satisfy a requirement that the bill not increase the deficit over five years.)

The bill also would extend through September 30, 2025, the increased COBRA (Consolidated Omnibus Reconciliation Act) fee imposed on all carriers and passengers entering the United States to ensure they are compliant with US Customs laws, as well as the increased merchandise processing fee paid by importers who import products from countries with which the United States does not have a free trade agreement.

The measure does *not* include a compliance provision from an earlier Senate-approved version of H.R. 1295 that would have required banks to send a Form 1099 to all interest recipients, including those with interest income below the current safe-harbor amount of $10 per year.

Trade promotion authority

Also on its way to president's desk is freestanding legislation (H.R. 2146) that incorporates the trade promotion authority title from H.R. 1314. The bill cleared the Senate on June 24 by a vote of 60-38 after passing the House several days earlier by a vote of 218-208.

Conference on trade facilitation bill pending

In a related development, the Senate on June 24 voted to go to conference with the House to resolve differences over competing taxpayer compliance provisions in legislation (H.R. 644) to extend certain trade facilitation and enforcement activities. As approved in the Senate last month, the measure includes a provision that would deny new passports to – or revoke existing passports held by – certain delinquent taxpayers. The JCT estimated the Senate provision would result in a 10-year revenue gain of $398 million.
URL: https://www.jct.gov/publications.html?func=startdown&id=4783

The House version, approved on June 12, drops the Senate offset in favor of a provision that would increase the dollar-threshold for the penalty for failure to file tax returns within 60 days of their due date. The penalty under current law is the lesser of $135 (indexed for inflation) or the amount required to be shown on the return; the penalty under the House-passed bill would be the lesser of $205 (indexed) or the amount required to be shown on the return. The JCT estimated the provision would increase federal revenues by $202 million over 10 years.
URL: https://www.jct.gov/publications.html?func=startdown&id=4789

Tax News & Views will report on developments as negotiators evaluate the competing proposals.

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A note on our publication schedule

The House and Senate will be out of session from June 26 through July 6 as lawmakers leave Washington for the Independence Day recess. 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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Have a question?
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