



Tax

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Senate reaches for long-term Highway Trust Fund bill as House stands by five-month patch

The Senate this week narrowly cleared a key procedural hurdle which allowed the chamber to begin debate on July 24 on legislation that would utilize various tax compliance measures and other nontax provisions in order to partially finance a six-year extension of spending authority for the federal Highway Trust Fund.

The successful July 22 procedural vote came just one day after an effort to clear that same procedural hurdle fell short due to complaints from Democrats that they had not had sufficient time to read the more than 1,000-page bill.

Meanwhile, Republican and Democrat leaders in the House of Representatives are standing by a plan passed in that chamber on July 15 by a wide bipartisan majority that would use several tax compliance offsets, as well as other provisions, to extend the trust fund through December 18, 2015, with the goal of buying time for bipartisan negotiations to continue on legislation identify a way to pay for a long-term highway bill. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 24, July 17, 2015.)

URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150717_1.html

Absent action by Congress and President Obama, the Highway Trust Fund's spending authority will expire after July 31. The trust fund, which is financed mainly through excise taxes on gasoline and diesel fuel, is expected to become insolvent around the same time. Going forward, taxes dedicated to the trust fund are projected to fall short of anticipated spending by roughly \$16 billion per year, according to estimates from the nonpartisan Congressional Budget Office.

Contours of Senate plan

The Senate bill – the product of negotiations between Majority Leader Mitch McConnell, R-Ky., and Sens. Jim Inhofe, R-Okla., and Barbara Boxer, D-Calif. (the chair and ranking member of the Senate panel with jurisdiction over federal highway programs), with input on budget offsets from Senate Finance Committee Chairman Orrin Hatch, R-Utah and other key senators – would extend Highway Trust Fund spending authority through September 2021, and the government’s authority to collect dedicated excise taxes through September 2023.

Although the Developing a Reliable and Innovative Vision for the Economy (DRIVE) Act would extend spending authority for six years, it would finance only about three years of the shortfall between trust fund spending and dedicated revenues – or about \$50 billion. The tax-related offsets are in the areas of compliance and enforcement and include several proposals from the House-approved short-term highway bill that would:

- Require mortgage lenders to provide the IRS with additional information on outstanding loans – including the origination date of the mortgage, outstanding principal balance, and property address;
- Require estates with positive estate tax liability to provide the IRS with property value detail in order to ensure consistent basis reporting by beneficiaries for income tax purposes;
- Clarify that a six-year statute of limitations for the IRS to reassess taxpayers who substantially understate their income applies in the case of overstatement of basis;
- Adjust certain tax and information return filing deadlines in a manner that generally would require passthrough entities to file in advance of C corporations; and
- Extend through 2025 a current-law provision (set to expire in 2021) that allows employers to transfer excess defined benefit plan assets to retiree medical accounts and group term life insurance.

The DRIVE Act also includes two compliance offsets not in the House bill that would:

- Authorize the federal government to revoke or deny passports to individuals with more than \$50,000 of unpaid federal taxes and
- Require the federal government to utilize private debt collection agencies to help facilitate the collection of unpaid federal taxes.

According to a summary of the bill, these seven provisions together would increase federal revenues by roughly \$8 billion over 10 years. Other major budget offsets in the DRIVE Act include a \$16 billion provision that would reduce the dividend rate paid by the Federal Reserve on stock held by member banks with assets in excess of \$1 billion and the generation of \$9 billion through the sale of crude oil from the Strategic Petroleum Reserve.

Not all senators happy with McConnell-Boxer approach: The 62-36 vote on July 22 to close debate on a motion to proceed to consideration of the DRIVE Act – narrowly clearing the 60-vote threshold that applied to that procedural step – evidenced concerns from senators in both parties about the bill. Those who opposed moving to consideration of the bill have varying reservations about the legislation – from the composition of the plan’s budget offsets, to the

fact that it is not fully paid for, to certain transportation policy provisions in the areas of safety and mass transit, to the prospect the bill would be amended with unrelated provisions.

Amendment dispute bogging down floor debate: The bill now faces challenges from senators seeking to attach controversial amendments to what is considered “must-pass” legislation. For example, Sen. Ted Cruz, R-Texas, and Sen. Rand Paul, R-Ky. – both 2016 presidential contenders – are pushing for votes on amendments dealing with topics as varied as Iran sanctions and Planned Parenthood funding, respectively.

Another factor complicating the highway bill debate is the question of what to do about the Export-Import (Ex-Im) Bank – an independent federal agency which provides credit support to foreign buyers of US goods and services – whose charter lapsed at the end of June. Senate supporters of the bank would like to attach a provision extending its authorization to any highway legislation that moves this month.

White House spokesman Josh Earnest endorsed Ex-Im supporters’ strategy in remarks to reporters on July 23.

“Surface transportation legislation is the most likely legislative vehicle...to move before the end of the month. That’s why we’ve insisted that the provisions related to reauthorizing the Export-Import Bank should be added to any transportation bill that passes Congress this month,” Earnest said.

But the bank’s renewal is strongly opposed by many congressional Republicans, including Sen. Cruz – who has vowed to raise procedural roadblocks to any highway bill that extends the bank’s charter.

Majority Leader McConnell on July 24 set up procedural votes (likely to occur on July 26) on two amendments, one that would repeal the 2010 health reform law and one to reauthorize the Ex-Im Bank, while also making a move, known as “filling the amendment tree,” that prevents consideration of any other amendments to the bill – a move that prompted Sen. Cruz to denounce the process in an emphatic July 24 floor speech. A nonbinding vote in the Senate showed the Ex-Im Bank proposal likely maintains sufficient support to clear the 60-vote hurdle needed to advance in the chamber; however, the amendment to repeal the 2010 health law is not expected to be able to cross that threshold as it will be strongly opposed by Democrats, who control 46 seats in the Senate (44 of their own plus the 2 held by Independent Sens. Bernie Sanders of Vermont and Angus King of Maine, who caucus with the Democrats).

House leaders stand by five-month extension

For their part, House leaders – on both sides of the aisle – have been cool to the Senate approach, arguing instead that the Senate should simply take up and approve the five-month patch the House passed last week.

“This idea of a Senate bill coming together in the last minute...that’s not paid for, I think brings real doubt to a lot of people,” said Majority Leader Kevin McCarthy, R-Calif.

House Minority Leader Nancy Pelosi, D-Calif., also expressed skepticism that a bipartisan, bicameral agreement could come together on a long-term highway bill before the current authorization expires.

“The House sent to the Senate a five-month bill to extend the trust fund....Our hope was that the Senate would put the Ex-Im Bank on our bill [and] send it back over to us,” Pelosi said. “Instead, they’re saying that would have to be on a long-term bill, which cannot possibly be finished by the thirty-first of July when the authorization runs out.”

The Senate is expected to work through the weekend of July 25 in an effort to complete action on the DRIVE Act early next week. It is still unclear whether the House, which is scheduled to adjourn for a five-week recess beginning July 31, will accept any Senate-passed proposal, seek to amend it, or insist on its own approach. The Senate is presently not scheduled to adjourn for its summer recess until August 7.

More discussion from Deloitte Tax

For additional discussion of the how the House and Senate are approaching highway spending and what it could mean for tax reform, see related commentary in this issue of *Tax News & Views*.

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Commentary: International tax reform for highway spending – Expressway or dead end?

There is increasing speculation in Washington about the prospect of international tax reform legislation passing this year to help finance a long-term highway construction bill. Recent news stories have only increased visibility of this issue.

As the July 31 deadline for another Highway Trust Fund extension looms, demand for additional long-term highway funding is bipartisan and strong. As we have previously reported, a gas tax increase, although consistent with the traditional “user pays” approach to highway funding, has been ruled out by key congressional leaders as a way to close the gap between anticipated trust fund revenues and currently projected levels of infrastructure spending, which the nonpartisan Congressional Budget Office estimates to be \$90 billion over the next six years. That leaves lawmakers exploring other options, and “deemed repatriation” – a one-time levy on foreign-source income of US multinationals that has not previously been subject to US taxation – is among the few with at least some bipartisan support. Moreover, taxwriters, including House Ways and Means Committee Chairman Paul Ryan, R-Wis., believe the current US international tax rules are so broken that they need to be fixed immediately, even if, as congressional leaders have generally acknowledged, broader tax reform will remain on hold until a new president is in the White House.

Threading the needles

Supporters of using international tax reform to help finance highway spending have to thread two needles before such a plan can become law. First, they need the House and Senate to pass a short-term highway bill this month. Then, if that happens, supporters need to actually get consensus on an international-only tax reform plan to help pay for highways in the five months between now and the end of the year.

On the other hand, opponents of such a plan hope to prevent the debate on international tax reform from even getting off the ground by passing a multi-year highway bill this month. That is because if the pressure to fund highway spending is relieved, it is generally agreed that there will be little appetite in Congress to undertake international-only tax reform on its own this year.

This is the dynamic currently playing out on Capitol Hill. Ways and Means Committee Chairman Ryan recently moved a five-month highway funding extension through the House with the goal of giving taxwriters time to develop an international tax reform plan to help pay for a long-term highway bill. The Senate, meanwhile, remains in session this weekend to consider a multi-year highway bill released by Majority Leader Mitch McConnell, R-Ky., earlier this week. (See related coverage in this issue for additional details on these developments.)

Outlook

The Senate's votes to take up Sen. McConnell's bill do not necessarily indicate smooth sailing ahead. Under the chamber's procedural rules, a single member can cause substantial delays in considering even noncontroversial measures. Despite this hurdle, Senate passage of a multi-year bill currently does appear likely in the wake of this week's successful procedural votes. However, it is not clear whether the House would accept that in lieu of their preferred option, the five-month extension.

In light of that uncertainty, we do think there could be an effort to compromise on an even shorter extension (perhaps for 60 days) to allow Congress to re-examine the differing House and Senate approaches after the August recess.

Time is a valuable commodity, and there isn't much of it before the July 31 deadline for action on highways. Thus, we should know soon whether Congress has set the stage for a vigorous debate on international tax reform later this year or whether lawmakers instead have approved a multi-year highway bill and thereby greatly reduced the chances that Congress will consider tax reform before 2017.

Tax News & Views will keep you apprised of further developments as they unfold.

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Senate taxwriters clear tax extenders package

The Senate Finance Committee voted 23-3 on July 21 to approve a modified bill that would retroactively extend through 2016 several dozen temporary tax deductions, credits, and incentives that expired at the end of last year. (Sens. Dan Coats, R-Ind., Mike Enzi, R-Wyo., and Pat Toomey, R-Pa., voted against the bill.)

Discussion of permanent extenders deferred

Chairman Orrin Hatch, R-Utah, began the mark-up session by acknowledging that although there were likely enough votes to approve permanent extensions of some of the provisions, as has been done by the House Ways and Means Committee this year, he “agreed to defer” this push in effort to minimize contention and provide greater certainty to taxpayers. Ranking member Ron Wyden, D-Ore., noted that the long-term goal of the committee is comprehensive tax reform and an end to the annual ritual of renewing expired or expiring temporary provisions.

Notable provisions

As originally introduced by Chairman Hatch on July 17, the legislation called for a two-year renewal of more than 50 individual and business tax provisions, including:

- The tax credit for research and experimentation expenses;
- Exceptions under subpart F for active financing income;
- Lookthrough treatment of payments between related controlled foreign corporations under the foreign personal holding company rules;
- Bonus depreciation;
- 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements; and
- Beginning-of-construction date for renewable power facilities eligible to claim the electricity production credit or investment credit in lieu of the production credit.

The bill also revived one incentive – the tax credit for two-wheeled plug-in vehicles – which expired at the end of 2013 and was not included in the extenders package that Congress approved and President Obama signed into law late last year. (The Finance Committee bill does not seek to reinstate the credit for three-wheeled plug-in vehicles, which also expired in 2013 and was left out of last year’s extenders legislation.)

Modifications & amendments: Shortly before the committee mark-up, Chairman Hatch released a revised proposal that included a number of modifications to his original mark – most notably, indexing the increased section 179 expensing and phase-out limits (\$500,000/\$2 million) to inflation, liberalizing the research credit rules for certain small businesses, increasing the New Markets Tax Credit allocation, expanding the Work Opportunity Credit to make it available to employers hiring workers who have exhausted regular federal and state unemployment compensation benefits, and expanding section 181 special expensing rules for film and television productions to include live theatrical productions.

During the mark-up, Finance Committee members approved two amendments that would modify current-law provisions: one from Sen. Charles Grassley, R-Iowa, that would convert the biodiesel fuels credit to a production credit and another from Sen. Debbie Stabenow, D-Mich., that would allow taxpayers to exclude discharged mortgage debt from their taxable income if the discharge is subject to an arrangement that was entered into and evidenced in writing before January 1, 2017.

While committee members filed 105 amendments ahead of the markup, many were deemed not germane, and members simply used the meeting to briefly raise their priority issues. In the end, about 20 amendments were discussed – including the adoption of several House-passed permanent extensions, the elimination or phase-out of the wind production tax credit, and the phase-out of bonus depreciation – but only the two from Grassley and Stabenow were accepted, and the others were withdrawn by the sponsors before being voted upon.

Revenue provisions

The Joint Committee on Taxation (JCT) staff estimated that the modified chairman's mark would reduce federal receipts by roughly \$95 billion over 10 years. (An official estimate for the package as approved has not yet been released; Sen. Grassley estimated that his amendment to the biodiesel fuels credit would reduce the cost of that provision.) The legislation is largely unoffset, reflecting Republicans' view that extensions of current law should not be paid for. However, it does include three revenue-raising provisions, estimated to increase federal receipts by \$1.8 billion over 10 years that would:

[URL: https://www.jct.gov/publications.html?func=startdown&id=4803](https://www.jct.gov/publications.html?func=startdown&id=4803)

- Require mortgage lenders to include additional information on returns filed with the IRS and statements issued to borrowers with respect to debt secured by real property;
- Exclude certain clean coal power grants from gross income for eligible noncorporate recipients, and require those taxpayers to make an up-front payment to the federal government of 1.18 percent of the value of the grant and reduce their adjusted basis in depreciable property related to the grant; and
- Increase the excise tax rates of liquefied natural gas and liquefied petroleum gas.

These pay-fors were intended to offset the cost of modifications added to some of the extended provisions. The offset related to mortgage interest reporting – which accounts for almost all of the revenue – also was included as one of the offsets in the short-term highway bill that cleared the House last week and is in the long-term highway bill the Senate took up this week. (For coverage of the House-passed highway bill, see *Tax News & Views*, Vol. 16, No. 24, July 17, 2015; for details on the Senate highway bill, see related coverage in this issue.)

[URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150717_1.html](http://newsletters.usdbriefs.com/2015/Tax/TNV/150717_1.html)

A complete list of the extenders and revenue provisions in the legislation is available from Deloitte Tax LLP. Descriptions of the provisions in Chairman Hatch's original mark and subsequent modifications are available from the JCT staff.

[URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150724_3suppA.pdf](http://newsletters.usdbriefs.com/2015/Tax/TNV/150724_3suppA.pdf)

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[URL: https://www.jct.gov/publications.html?func=startdown&id=4802](https://www.jct.gov/publications.html?func=startdown&id=4802)

Next steps

The Finance Committee's relatively early action on extenders this year does not necessarily mean Congress will avoid the usual December scramble on a final bill. It is not yet known when the Finance package will be considered by the full Senate. In the House, Ways and Means Committee Chairman Paul Ryan, R-Wis., has said that he would like for his panel to move an extenders bill as early as September but has indicated that he expects to include permanent extensions of several of the now-expired provisions.

So far this year, the House has approved measures that would permanently extend the research credit, the state and local tax deduction, increased section 179 expensing for small businesses, tax relief provisions targeting S corporations, and several charitable giving provisions. But because they are not offset, those House-passed bills have not garnered much support from congressional Democrats and have drawn veto threats from President Obama. The prospect of an ensuing partisan stalemate has prompted most observers to believe that enactment of extenders legislation is unlikely until closer to the end of 2015.

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