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White House to propose $10-per-barrel oil tax in FY 2017 budget package

The Obama administration announced February 4 that it will include a proposal in its fiscal year 2017 budget blueprint to impose a $10-per-barrel “fee” on oil, to be paid by the oil companies, that would cover the cost of increased spending on “clean transportation infrastructure” and reforms to “investments we already make to help reduce carbon pollution, cut oil consumption, and create new jobs.”
URL: https://www.whitehouse.gov/the-press-office/2016/02/04/fact-sheet-president-obamas-21st-century-clean-transportation-system

According to a White House fact sheet, the 10-year budget blueprint, which the president will send to Congress on February 9, will call for an investment of:

- $20 billion per year for programs such as expanded mass-transit systems in cities, suburbs, and rural areas; increased investments in high-speed rail and new rail technologies; and modernization of the nation’s freight system;
- $10 billion per year to provide incentives for state and local governments to invest in “smarter, cleaner, [and] more resilient transportation systems”; and
- $2 billion per year to promote and expand the development of clean transportation options such as self-driving cars and clean aircraft.

The fee on oil companies, which would be phased in over five years, would “[raise] the funding necessary to make these new investments, while also providing for the long-term solvency of the Highway Trust Fund to ensure that we maintain the infrastructure that we have,” the fact sheet says.

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Deemed repatriation still in the mix

In addition to the new oil fee, the budget will continue the president's call for using one-time deemed repatriation revenue from business tax reform to help pay for transportation infrastructure. The fact sheet explains that the tax reform revenue would "fund a temporary near-term surge in investments while the oil fee will pay for the long-term investments needed to put us on the right path for the years ahead."

President Obama first proposed using business tax reform revenue to pay for infrastructure spending in the business tax reform framework he released in 2012. (For prior coverage, see *Tax News & Views*, Vol. 13, No. 8, Feb. 22, 2012.)
URL: http://newsletters.usdbriefs.com/2012/Tax/TNV/120222_1.html

A political nonstarter for Republicans

The president's proposal is unlikely to be taken up in the Republican-controlled Congress, where leaders have indicated that they intend to use the year ahead to lay the groundwork for their own economic agenda – including tax reform – which they hope will be enacted into law after 2017 under a new Republican administration. (See separate coverage in this issue for discussion of the congressional GOP agenda.)

In a statement released February 4, House Speaker Paul Ryan, R-Wis., rejected the proposal outright.

"The president should be proposing policies to grow our economy instead of sacrificing it to appease progressive climate activists. The good news is this plan is little more than an election-year distraction. As this lame-duck president knows, it's dead on arrival in Congress, because House Republicans are committed to affordable American energy and a strong US economy," Ryan said.

House Ways and Means Tax Policy Subcommittee Chairman Charles Boustany, R-La., dismissed the proposal as "a tax hike that will be passed on at the pump to…families who are trying to make ends meet."

The oil tax is expected to get a similar reception in the Senate, where lawmakers this week rejected a proposal to phase out current-law tax incentives for the fossil fuel industry that was offered as an amendment to energy policy legislation currently under consideration on the chamber floor. (See separate coverage in this issue for details.)

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Brady to lead House tax reform tax force

House Speaker Paul Ryan, R-Wis., announced February 4 that Ways and Means Committee Chairman Kevin Brady, R-Texas, will head up a task force on tax reform designed to "create

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jobs, grow the economy, and raise wages by reducing rates, removing special interest carve-outs, and making our broken tax code simpler and fairer."

The tax reform task force is one of six that are charged with carrying out the policy agenda that House Republicans developed during their recent member retreat in Baltimore. The five other task forces will focus on national security; reducing regulatory burdens; health care reform; poverty, opportunity, and upward mobility; and restoring constitutional authority. (The groups are comprised of committee chairs of jurisdiction, which means that Brady will also serve on the health care reform task force along with Budget Committee Chairman Tom Price of Georgia, Education and the Workforce Committee Chairman John Kline of Minnesota, and Energy and Commerce Committee Chairman Fred Upton of Michigan.)

Ryan explained at a February 4 press conference that the task forces will operate under a "bottom-up process" and "will seek input from all [House] members and their constituents." He did not publicly set a specific deadline for the task forces to complete their work, stating only that the groups would flesh out the Republican agenda and present it to the country "in the months ahead."

Ways and Means hearing focuses on economic growth

Earlier in the week, House taxwriters kicked off their public activities for 2016 with a February 2 hearing that featured four economists who focused on broad ideas for accelerating economic growth. Ways and Means Chairman Brady opened the event by declaring that the US "remain[s] in the middle of the worst recovery in the post-war era."

Brady said the Ways and Means Committee will have a "positive, pro-growth agenda" this year and will take action on tax reform, welfare reform, health care reform, trade expansion, entitlement reform, and efficiency in government. The committee heard from economists Jared Bernstein of the Center on Budget and Policy Priorities, Kevin Hassett of the American Enterprise Institute, Douglas Holtz-Eakin of the American Action Forum, and Stephen Moore of the Heritage Foundation.

Brady noted during the hearing that reducing the corporate tax rate to his stated goal of 20 percent or lower will require lawmakers to "think fresh about how we tax business income, both [on] the corporate and through the small business and passthrough sides."

International reform is first priority: During a February 1 speech at the Heritage Foundation and in comments to reporters following a Republican Ways and Means member retreat later that day, Brady reiterated that international tax reform will be the committee's first priority this year. He said there is no specific timeline for a committee vote on a bill, but he has tasked Tax Policy Subcommittee Chairman Charles Boustany, R-La., with drafting the legislation. Boustany told reporters that his goal is to have a draft completed before the House adjourns for its summer recess on July 15, ahead of the Republican National Convention.

Along with Ways and Means Democrat Richard Neal of Massachusetts, Boustany last summer introduced an "innovation box" proposal intended to be one component of a broader international reform package. The proposal would provide a lower tax rate for certain income

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generated from patents and other intellectual property. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 27, July 31, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150731_1.html

Boustany and Neal solicited feedback on their initial draft, and a refined version is expected to be included in the legislation Boustany develops this year. Other elements of an international tax bill are anticipated to include the transition from a worldwide to a territorial system for taxing foreign-source income of US multinationals, a "deemed repatriation" provision that would impose a tax lower than the US corporate rate on profits currently held overseas, and safeguards against base erosion.

Brady met with Finance Committee Chairman Orrin Hatch, R-Utah, on February 2 to discuss international tax reform, and Hatch stated that the two plan to meet weekly on the issue. Hatch currently is working to develop a bill addressing corporate integration, which is expected to give corporations a deduction for dividends paid out to shareholders and revise the tax treatment of dividends shareholders receive.

Hatch told reporters after the meeting with Brady that taxwriters need to "really examine" international tax reform and corporate integration "and see which one we can do our best with. If we can do both, it would be wonderful."

FAA funding

Another issue likely to consume time on the Ways and Means Committee's agenda in the coming weeks is legislation to reauthorize funding for the Federal Aviation Administration (FAA). The current funding authorization for the agency is set to expire March 31. A just-released proposal from House Transportation Committee Chairman Bill Shuster, R-Pa., that would renew FAA funding for six years includes provisions that would turn over management of the nation's air traffic control system to a yet-to-be-created nongovernmental agency and pay for air traffic control operations through user fees rather than airline ticket taxes.

It is unclear what impact a shift to user fees would have on the jurisdiction of congressional taxwriters over FAA funding in the future. Shuster told Tax Analysts February 3 that his panel is "working with the Ways and Means Committee to determine all that." Ways and Means Chairman Brady likewise commented that House taxwriters are "reviewing the proposal and the jurisdictional changes. No decision has been made. We are going to continue to work with Chairman Shuster to learn more about the proposal."

Across the Capitol, Senate Finance Committee Chairman Hatch told Tax Analysts on February 4 that Shuster's proposal was "an interesting idea," but expressed doubt that it would "go anywhere" in Congress.

Shuster has not yet scheduled a mark-up of his proposal in the Transportation Committee. For its part, the Senate Commerce, Science, & Transportation Committee, which has jurisdiction over transportation issues in that chamber, has not yet released an FAA funding proposal of its own.

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— Storme Sixeas
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House effort to override veto of PPACA repeal fails; administration to propose changes to 'Cadillac' tax

The House of Representatives on February 2 failed to override President Obama's recent veto of legislation that would have repealed most of the tax provisions in the Patient Protection and Affordable Care Act (PPACA) – including the medical device excise tax and the "Cadillac" tax on high-cost employer-provided health plans – and blunted the impact of the PPACA's health insurance coverage mandates for individuals and employers. Meanwhile, the White House indicated that its upcoming budget blueprint for fiscal 2017 will include a proposal to dial back the Cadillac tax.

Veto override vote

The House's attempt to override the president's veto of the Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 (H.R. 3762) fell by a mostly party-line vote of 241-186 – well short of the two-thirds majority required for success.

H.R. 3762 won passage in the House on January 6 and was approved in the Senate last December under the fast-track budget reconciliation process, which 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. It was the first bill undermining core provisions of the PPACA to clear both chambers of Congress and make its way to the White House. (For prior coverage and details on the provisions of H.R. 3762, see *Tax News & Views*, Vol. 17, No. 2, Jan. 8, 2016.) The president vetoed the measure on January 8.
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160108_1.html

The veto-override effort was not expected to succeed: H.R. 3762 did not clear the House – or the Senate – by a veto-proof supermajority, which essentially foreclosed any attempt to repeal key pieces of the PPACA while President Obama remains in office. But House Speaker Paul Ryan, R-Wis., had stated last month that he would pursue the legislative process "all the way to the end under the Constitution."

In remarks on February 2, Ryan indicated that congressional Republicans now are focused on repealing the PPACA in the next presidential administration.

"We have now forged a path that is a clear path to repealing Obamacare without 60 votes in the Senate. So what we are proving today is that if we have a Republican president next year, we will repeal Obamacare and we will replace Obamacare," Ryan said.

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Changes ahead for Cadillac tax?

In other PPACA-related developments, White House Council of Economic Advisers Chairman Jason Furman indicated this week that the fiscal year 2017 budget blueprint President Obama will send to Congress February 9 will include a proposal to modify the Cadillac tax to account for regional differences in health insurance costs.

Furman wrote in an article published February 3 in the *New England Journal of Medicine* that the budget proposal will provide "that in any state where the average premium for 'gold' coverage on the state's individual health insurance marketplace would exceed the Cadillac-tax threshold under current law, the threshold would instead be set at the level of that average gold premium." If enacted into law, the proposed change would "[prevent] the tax from creating unintended burdens for firms located in areas where health care is particularly expensive, while ensuring that the policy remains targeted at overly generous plans over the long term if health costs rise faster than the tax thresholds (which will rise with the overall Consumer Price Index)," the article states.
URL: http://www.nejm.org/doi/full/10.1056/NEJMp1514970?query=featured_home&&

Implementation of the Cadillac tax was delayed for two years – until 2020 – under the extenders/omnibus spending agreement (H.R. 2029) that became law late last year. (H.R. 2029 also suspends the medical device excise tax for sales in 2016 and 2017 and suspends the annual fee on health insurance providers for 2017. For prior coverage, see *Tax News & Views*, Vol. 16, No. 44, Dec. 18, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/151218_1.html

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House taxwriters advance retirement account 'fiduciary' legislation

The House Ways and Means Committee on February 3 voted 26-12 to approve bipartisan legislation that is designed to limit the ability of the Obama administration to issue regulations related to investment advice provided to retirement account holders.

The Strengthening Access to Valuable Education and Retirement Support (SAVERS) Act of 2015 (H.R. 4294), sponsored by Ways and Means Republican Peter Roskam of Illinois, would amend the section 4975 prohibited transaction rules to include a new statutory exemption for a fiduciary providing investment advice to a plan, plan participant, or plan beneficiary. The bill would define investment advice for this purpose to include recommendations regarding acquiring, holding, exchanging, or disposing of property of the plan; the management of property of the plan; or the retention of a person who would provide the advice. The advice would have to be rendered under an agreement acknowledging that the person rendering the advice is a fiduciary, or under an understanding that the advice is individualized to the plan, plan participant, or beneficiary.

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The bill includes an additional exemption from the prohibited transaction rules for so-called "best interest recommendations" as well as for certain fee arrangements in which investment advice is rendered for no more than reasonable compensation.

The legislation also provides that the Labor Department is prohibited from amending any regulation related to the definition of "fiduciary" under Title I of the Employee Retirement Income Security Act of 1974 (ERISA). This prohibition applies to any regulation or other rules or administrative position that is not effective as of January 1, 2015. However, the bill provides that such guidance can become effective, but only if affirmatively approved by Congress through enactment of a bill or joint resolution within a prescribed timeframe. Finally, the bill provides that if Congress does affirmatively approve such a rule made by the Labor Department, within 61 days after the bill is enacted, the changes made by the bill will not become effective.

According to a summary of the legislation produced by the Joint Committee on Taxation, the bill would have a negligible effect on federal revenues.
URL: https://www.jct.gov/publications.html?func=startdown&id=4867

"We can all agree that we need policies to root out bad actors in the retirement savings industry who are taking advantage of consumers to benefit their own financial interests," Roskam said in his opening statement at the Ways and Means mark-up. "This bill does that. By expanding and strengthening the definition of a fiduciary and requiring investment advisors to always act in the best interests of their clients when providing investment advice. The legislation creates a new, enforceable best interest requirement, significantly strengthening current legal protections for retirement savers."

The bill – along with the Affordable Retirement Advice Protection Act (H.R. 4293), a companion measure that amends ERISA – now goes to the full House of Representatives, although floor time for the legislation has not yet been scheduled. (The House Committee on Education and the Workforce successfully reported both H.R. 4293 and H.R. 4294 on February 2.)

Labor Department's fiduciary rule

The flurry of legislative activity in this area comes after the Labor Department on January 28 submitted its final rule expanding the definition of a fiduciary to the Office of Management and Budget (OMB) for review. OMB has up to 90 days to complete its review (although there is no minimum review period). If OMB does not return the rule to the Labor Department for further consideration, the regulation will then be published in the *Federal Register* with an effective date no sooner than 60 days following publication.

Though the final rule has not yet been made public, many lawmakers – primarily Republicans – have expressed concern that the rule could, among other things, create onerous disclosure requirements, reduce the availability of financial advice, and result in fewer small firms offering retirement plans.

A previous iteration of the rule issued by the Labor Department in proposed form during April 2015, elicited 386,000 individual comments, according to Rep. Roskam.

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Most Democrats opposed to SAVERS Act

Although the SAVERS Act is co-sponsored by a handful of Democrats, including Ways and Means Committee members Richard Neal of Massachusetts and John Larson of Connecticut, it is generally opposed by others in their party.

Ways and Means Committee ranking Democrat Sander Levin of Michigan stated during the mark-up that the legislation "is essentially an attempted end-run around the rulemaking process."

Democratic taxwriter Charles Rangel of New York echoed that sentiment, remarking that he could not "see any reason why we can't wait for the rule."

As of press time, the White House had not yet commented on either of the bills currently moving through the House. However, in October 2015, the White House issued a Statement of Administration Policy threatening a veto of separate legislation passed by the House that would have delayed the Labor Department's ability to issue a rule in this area.
URL: https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr1090r_20151026.pdf

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Senate rejects proposed phase-out of fossil fuel tax incentives

The Senate voted 45-50 on February 2 to reject a proposed amendment to the Energy Policy Modernization Act (S. 2012) that would have phased out current-law tax incentives for the fossil fuel industry.

The amendment, offered by Sen. Brian Schatz, D-Hawaii, generally would have repealed the following tax code provisions by 2020, subject to a phase-down schedule that would have taken effect in 2017:

- The deduction for intangible drilling costs;
- Percentage depletion for oil and natural gas wells;
- The deduction for oil-related qualified production activities income;
- Amortization of geological and geophysical expenditures;
- Percentage depletion for oil shale;
- Expensing of exploration and development costs for oil shale;
- Capital gains treatment for royalties from coal;
- The deduction for tertiary injectants;
- The passive loss limitation for working interests in oil and natural gas properties; and
- The marginal wells credit.

According to Schatz, the amendment was designed to mirror the phase-out of wind and solar energy credits enacted in the combined tax extenders/omnibus spending agreement (H.R.

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2029) that was signed into law late last year. As part of the omnibus spending component of the package, Congress struck a deal to extend the wind production tax credit, the wind investment tax credit in lieu of production tax credit, and the solar investment tax credits for residential and commercial systems – all subject to a phase-out schedule – in exchange for lifting the 40-year ban on crude oil exports. The crude oil provision emerged as a key Republican priority during negotiations. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 44, Dec. 18, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/151218_1.html

In a February 2 statement on the Senate floor, Schatz framed his amendment as providing parity for the tax treatment of alternative and traditional energy sources.

“We should make sure to re-evaluate tax preferences for fossil fuels and clean energy at the same time. If we are serious about creating a level playing field, we should phase out incentives for fossil fuels as we phased them out for wind and solar power,” Schatz said. “Majorities of both Democrats and Republicans support the repeal of these tax preferences, and so I hope my colleagues will join me in a big bipartisan vote for putting our clean sources of energy on equal footing with their fossil fuel counterparts.”

Senate Energy and Natural Resources Committee Chair Lisa Murkowski, R-Alaska, who sponsored S. 2012, argued in response that her bill was “not the appropriate venue for a tax amendment.”

“As my colleagues know, all revenue-raising measures must originate within the House. The adoption of this tax-related amendment would therefore create an impermissible blue-slip problem,” Murkowski said.

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