



Tax

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### GOP shows little appetite for Obama’s final budget proposal

President Barack Obama on February 9 released a budget proposal for fiscal year 2017 – the last one of his presidency – that thematically aligns with his previous tax-and-spending blueprints and politically is unlikely to advance in the Republican-controlled Congress.

As he has done in previous budget packages, the president proposes tax increases primarily targeting multinational corporations, the fossil fuel industry, financial services companies, and high-income individuals to pay for priorities such as tax relief for small businesses and lower- and middle-class individuals, as well as increased spending on “clean” transportation infrastructure, alternative energy research and development, cancer research, and an expansion of computer science education in elementary and secondary schools.

The bulk of the revenue-raising provisions are carried over without substantial change from earlier budget packages. But the budget also includes several new tax provisions that the White House previewed in the days leading up to the budget’s formal release – most notably, a proposed \$10.25-per-barrel “fee” on oil, to be paid by the oil companies – that would cover the cost of increased spending on clean transportation infrastructure projects. Another new revenue raiser that was *not* mentioned in any of the administration’s budget previews is intended to ensure that all trade or business income of high-income taxpayers is subject to the 3.8 percent net investment income tax enacted under the Patient Protection and Affordable Care Act (PPACA).

On the incentive side, the White House budget adds a new tax credit for employers who hire community college graduates and provisions making it easier for smaller employers to join multiple employer pension plans. The administration also has proposed to dial back the “Cadillac” tax on high-cost employer-provided health insurance coverage (enacted in the

PPACA) by adjusting the threshold for imposing the tax to account for regional differences in the cost of health care coverage.

The budget package generally has gotten an unenthusiastic reception among congressional Republicans, who have indicated that they will use this election year to map out their own tax-and-spending agenda which they hope to see enacted under a new presidential administration in 2017.

This article looks at the projected debt-and-deficit picture under the president's final budget blueprint, highlights the new revenue provisions as well as some of the significant returning provisions, and looks at the congressional response to the president's proposal. Descriptions of specific provisions are based on details in the so-called "Greenbook," which provides the Treasury Department's explanations of the revenue provisions in the budget proposal.

**URL:** <https://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2017.pdf>

## **The big (fiscal) picture**

According to the estimates from the White House Office of Management and Budget (OMB), the president's budget blueprint includes roughly \$46.5 trillion in revenue and \$52.6 trillion in spending over the 10-year budget window, which spans fiscal years 2017 through 2026. The resulting cumulative deficit of roughly \$6.1 trillion over the next decade represents net deficit reduction of about \$3.6 trillion over the same period measured against the revenue and spending levels in the budget's baseline.

As projected in the budget, total revenues as a share of gross domestic product (GDP) would rise from 18.1 percent in the current fiscal year (i.e., fiscal 2016) to 20.0 percent in fiscal 2026, for an average of 19.7 percent over the 10-year budget window; outlays would rise from 21.4 percent of GDP this year to 22.8 percent in 2026, for a 10-year average of 22.3 percent. (In the Budget and Economic Outlook it released last month, the Congressional Budget Office reported that over the past 50 years – 1966 to 2015 – federal revenues have averaged 17.4 percent of GDP and outlays have averaged 20.2 percent of GDP.)

Due in part to the enactment late last year of a combined tax extenders/omnibus appropriations bill (H.R. 2029) – which included unpaid-for extensions of expired and expiring temporary tax provisions and other deficit-increasing tax provisions – the budget anticipates a fiscal year 2016 deficit of \$616 billion, or 3.3 percent of GDP – a sizable increase over last year's deficit of \$438 billion, or 2.5 percent of GDP (and the first year-to-year deficit increase, as share of the economy, since 2009).

Over the 10-year window, however, the budget would hold down deficits to an average of 2.6 percent of GDP – a level slightly lower than the 50-year average deficit of 2.8 percent of GDP. Debt held by the public – a frequently cited metric of the level of government indebtedness – though well above its 50-year average of 39 percent of GDP, would remain relatively steady at about 75 percent of the economy.

**Obama modifies stance on revenue-neutral business tax reform:** Recent budget blueprints that President Obama has submitted to Congress have included what the White House called a "reserve for long-run revenue-neutral business tax reform," which housed many

of the administration's proposed tax policies affecting corporations and passthrough entities. The net budget effect of these policies was typically shown by OMB to raise tens of billions of dollars, but was not included in budget's top-line revenue levels on the basis that any resulting net revenue increase from the policies would be offset by a commensurate decrease in business taxes (e.g., a reduction in the corporate tax rate) as part of a broader, revenue-neutral business tax reform package.

As explained in the Treasury Greenbook for the fiscal year 2016 budget which was released last February, "[t]he administration proposes that these policies be enacted as part of business tax reform that is revenue neutral over the long run. As a result, the net savings from the proposals...are not reflected in the budget estimates of receipts and are generally not counted toward meeting the administration's deficit reduction goals."

But the president's latest budget blueprint modifies that stance, and now dedicates more than \$500 billion from business tax changes toward reducing the deficit.

Jason Furman, chairman of the president's Council of Economic Advisers, confirmed this policy shift during a White House Webcast shortly after the budget's release, and explained that it was designed to recoup the reported revenue loss associated with the enactment of the extenders/appropriations legislation last December.

"Last year we treated business tax reform as revenue-neutral, put it in a box in the budget and didn't have any of those policies adding into the budget totals because it was assumed they were paying for business tax reform," Furman said. "...[W]e had proposed to pay for tax extenders last year. In a compromise with Congress in order to get things done, we agreed to do [extenders] last year without paying for them, but if we come back and reform the business tax system, we'd want to make up for that revenue [loss] this year."

## **New budget provisions**

The president's FY 2017 includes only a relative handful of new revenue-raising proposals and tax incentives.

**Changes to self-employment, Net Investment Income taxes:** As it has in recent budget plans, the White House again proposes to plug perceived gaps in the application of Self-Employment Contributions Act (SECA) taxes to owners of certain passthrough entities that can arise due to differences in entities' legal form, the legal form of payments received by owners, or both.

In particular, the budget proposes to apply SECA taxes to passthrough owners in the same manner and to the same degree – regardless of whether the entity is organized as an S corporation, limited partnership, general partnership, or limited liability company (LLC) – as owners who materially participate in the business subject to SECA taxes on their distributive share of partnership income, and owners who do not materially participate subject to SECA taxes on an amount equivalent to reasonable compensation.

Importantly, these changes would apply only to "professional service businesses," which are defined in the Greenbook as "partnerships, S corporations, or other entities taxed as

partnerships substantially all the activities of which involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, and consulting, ...as well as athletics, investment advice or management, brokerage services, and lobbying.”

Additionally, in a significant change from prior budgets, the proposal would also subject to the 3.8 percent Net Investment Income Tax (NIIT) under section 1411 – which currently applies to various forms of investment income (e.g., interest, dividends, rents, royalties) – any gross income and gain from trades or businesses that is not otherwise subject to employment taxes. Under the proposal, the NIIT would continue to apply only to single and joint filers with incomes over \$200,000 and \$250,000, respectively.

According to the Greenbook, this change would “ensure that all trade or business income of high-income taxpayers is subject to the 3.8 percent Medicare tax, either through NIIT or SECA” by addressing “limited partners and members of LLCs or other entities taxed as partnerships who materially participate in their firms but who claim the limited partner exclusion from SECA.”

The proposal would direct revenues raised by the NIIT to the Medicare Hospital Insurance (HI) trust fund (as opposed to the general fund, as under current law). Together with the SECA changes discussed above, the administration estimates the proposal would raise almost \$272 billion over 10 years. A Treasury official indicated that the portion dedicated to Medicare would be sufficient to extend the solvency of the HI trust fund for more than 15 years. (It is currently scheduled to become insolvent in 2030).

**Oil fee:** The administration is also proposing to impose a “fee” on a per-barrel equivalent of crude oil to cover the cost of upgrades to the nation’s transportation system, investments in cleaner transportation technologies, programs to reduce carbon emissions, and relief for certain households with “particularly heavy energy costs.” The fee of \$10.25 per barrel would be imposed on oil companies and collected on domestic and imported petroleum products, but not on exported petroleum products. A temporary exemption would apply to home heating oil.

The fee would be phased-in over a five-year period beginning October 1, 2016, and would be fully phased-in as of October 1, 2021. It would be adjusted for inflation after 2016. The administration estimates the fee would increase federal receipts by just over \$319 billion between 2017 and 2026.

**Recalibrated Cadillac tax:** The so-called “Cadillac” tax, which was enacted in the PPACA and is now scheduled to take effect in 2020, is an excise tax of 40 percent of the cost of applicable employer-provided health care coverage that exceeds a threshold amount (\$10,200 for individual coverage and \$27,500 for family coverage in 2018 dollars, adjusted annually for inflation). The threshold amount is increased for individuals who are qualified retirees or who are enrolled in a plan in which the majority of participants are engaged in a high-risk profession. The tax is imposed on and paid by the coverage provider and is deductible from the provider’s business income. (As originally enacted in 2010, the PPACA provided that the tax was nondeductible. As a result of a change enacted in last year’s extenders/omnibus bill, the tax is now deductible.) The tax applies to coverage for an employee, any former employee, surviving spouse, and any other primary insured individual.

The Cadillac tax was enacted to encourage employers to reduce tax-free compensation provided in the form of excess health care benefits by making the cost of providing those benefits more expensive. But critics of the tax have argued that if the cost of health care grows faster than the overall rate of inflation, the tax will eventually be imposed on plans whose costs exceed the prescribed thresholds but do not provide the kind of overly generous benefits that the levy was intended to curb – an issue of particular concern in states where health care costs exceed the national average. Others have noted that some firms with unusually sick employees could be subject to the tax, even if their health coverage is not especially generous. Employers have also contended that it is difficult to predict and control their exposure to the excise tax for purposes of health care benefits provided under a flexible spending arrangement (FSA) for any employee, noting that the cost of such coverage can be highly variable depending on the level of contribution, which may range from zero to the maximum amount permitted under the arrangement.

The budget proposal generally would address these concerns by (1) increasing the Cadillac tax threshold to the greater of the current-law threshold or a “gold plan average premium” that would be calculated under a prescribed formula and published for each state; (2) requiring the Government Accountability Office to conduct a study of the potential effects of the excise tax on firms with unusually sick employees; and (3) providing a formula for determining the cost of coverage under an FSA for similarly situated employees.

The changes would be effective for tax years beginning after December 31, 2016 (although no plans are subject to tax under current law until 2020, many have expressed concerns that changes to the tax need to be made as soon as possible to give plan sponsors time to adjust their benefits to ensure compliance with the tax). The administration estimates that the provision would reduce federal receipts by nearly \$1.3 billion between 2017 and 2026.

**Community College Partnership Tax Credit:** The administration proposes a new tax credit for businesses that hire graduates from community and technical colleges. The credit would be a component of the general business credit. The proposal would provide \$500 million in tax credit authority for each of the five years, 2017 through 2021, with the credit authority allocated annually to states on a per capita basis. Unused credits would be assigned to the national pool and reallocated to states on a per capita basis the following year. A designated state agency would competitively award credit authority to qualifying community and technical college consortia, and certify employer participation and eligibility to claim the credit. The award criteria would be designed to encourage partnerships focused on education and training pathways to get low-income and disadvantaged students the skills for better paying jobs. State agencies would require participating employers to make contributions to strengthen community college programs in areas such as: curricula development; skills assessment development; internships and applied learning opportunities; registered apprenticeship programs; provision of labs; and donations of cash, equipment, and personal services.

Qualifying employers would receive a one-time \$5,000 tax credit for each qualifying employee hired. Qualifying employees must be hired on a full-time and permanent basis and certified by the designated state agency to have earned a degree from a participating college program. The credit would be partially recaptured if the employee worked less than one year.

According to the administration, the proposal would reduce federal receipts by an estimated \$2.2 billion between 2017 and 2026.

**Multiple employer pension plans:** The budget blueprint includes several proposals – many of them carried over from previous years – to expand employee access to tax-preferred retirement savings plans. A new proposal would make it easier for small employers to join multiple employer plans (MEPs) by loosening the current-law rules that require participating employers to share some employment-based nexus or organizational relationship unrelated to the provision of benefits. Specifically, the proposal would amend the Employee Retirement and Income Security Act of 1974 (ERISA) to allow unaffiliated employers to adopt a defined contribution MEP that would be treated as a single plan under ERISA and the tax code, provided that the entity promoting and administering the plan, the participating employers, and the plan meet certain specified conditions.

The proposal would be effective for tax years beginning after December 31, 2016, and according to the administration would reduce federal receipts by an estimated \$1.8 billion between 2017 and 2026.

### **Significant returning multinational and corporate tax provisions**

The bulk of the corporate tax provisions in the fiscal year 2017 budget are carried over – largely unchanged – from prior years. Among the notable proposals are:

- **International tax reform:** As in previous years, the administration proposes to tighten the international tax rules by, among other things, provisions to (1) impose a per-country 19 percent minimum tax on the foreign income of domestic companies and their controlled foreign corporations, (2) impose a one-time 14 percent deemed repatriation tax on previously untaxed foreign earnings, (3) restrict deductions for “excessive” interest by members of financial reporting groups, (4) limit the ability of domestic entities to expatriate, (5) curtail the use of leveraged distributions to avoid dividend treatment, and (6) limit shifting of income through intangible property transfers. Treasury Secretary Jacob Lew told Senate Finance Committee members at a February 10 budget hearing that the proposed 19 percent minimum tax on foreign income was scored as increasing federal receipts by an estimated \$350 billion over 10 years – an increase of more than 70 percent from the \$205 billion estimate for last year’s proposal. Lew attributed the increase to updated Treasury estimates on the level of corporate earnings retention overseas and the rates being paid in the countries where those earnings are currently invested.
- **Financial services provisions:** The FY 2017 budget resurrects a proposal from previous budget blueprints that would levy a fee of 7 basis points (.07 percent) on certain liabilities of financial institutions with worldwide consolidated assets of more than \$50 billion. According to the Greenbook explanation, financial institutions would include banks, insurance companies, exchanges, asset managers, and broker-dealers. Other returning proposals include mandatory mark-to-market accounting for derivatives contracts and changes to the tax treatment of certain insurance industry products.
- **Energy provisions:** In addition to the proposed new per-barrel “fee” on oil, the administration has revived prior proposals to eliminate what it views as preferences in the tax code for fossil fuel and treat fossil-fuel publicly traded partnerships as C corporations for income tax purposes.
- **Business “loophole” closers:** The budget once again includes a long list of revenue-raising proposals aimed at closing perceived tax “loopholes.” Examples include

provisions to repeal the LIFO method of accounting for inventories and the lower-of-cost-or-market accounting method, modify the like-kind exchange rules, slow the depreciation schedule for corporate jets, repeal the nonqualified preferred stock designation, and eliminate the “boot-within-gain” limitation under section 356(a).

- **Information reporting and compliance provisions:** The administration re-proposes a series of measures from prior budgets aimed at improving taxpayer compliance and tightening information reporting requirements.

## Significant returning individual provisions

The FY 2017 budget package likewise reconstitutes a variety of revenue-raising provisions targeting high-income taxpayers, including, among others, proposals to:

- Increase the top rate on long-term capital gains and qualified dividends from 20 percent to 24.2 percent (or 28 percent when combined with the 3.8 percent surtax on net investment income);
- Eliminate stepped-up basis for appreciated assets at death;
- Tax donors currently on gifted appreciated property;
- Implement the so-called “Buffett Rule” – also referred to as the “Fair Share Tax” – which would require households with incomes over \$1 million to pay at least 30 percent of their income (after charitable giving) in taxes;
- Cap the value of itemized deductions and certain income exclusions for high-income taxpayers at 28 percent;
- Restore the estate tax parameters to those in effect in 2009 – i.e., a 45 percent top rate and a \$3.5 million exclusion;
- Tax income from carried interests at ordinary rates;
- Limit tax benefits for high-balance, tax-favored retirement plans; and
- Require nonspouse beneficiaries of deceased IRA owners and retirement plan participants to take inherited distributions over no more than five years.

On the incentive side, the budget brings back proposals to revamp current-law tax benefits for education, provide a “second-earner” tax credit for households with two wage earners, and expand the earned income tax credit to individuals without qualifying children.

Retirement savings incentives carried over from previous Obama administration budget packages would, among other things, provide for automatic enrollment in individual retirement accounts, expand penalty-free withdrawals from retirement accounts for long-term unemployed individuals, require retirement plans to allow participation by long-term part-time workers, and facilitate annuity portability.

## Limited ‘extenders’ included

The budget proposes long-term – and in some cases permanent – extensions of several temporary tax incentives that were most recently addressed in the combined extenders/omnibus spending legislation that was signed into law at the end of last year. Specifically, the administration proposes to:

- Permanently extend and modify the Work Opportunity Tax Credit (currently scheduled to expire at the end of 2019).
- Permanently extend and modify the Indian employment tax credit (currently set to expire at the end of 2016).

- Permanently extend and modify the New Markets Tax Credit (currently scheduled to expire at the end of 2019).
- Permanently extend and modify the renewable electricity production tax credit and investment tax credit. (As Congress and the White House negotiated the extenders/appropriations bill last December, Republicans agreed to extend these provisions for five years – subject to a phase-out – in exchange for lifting the 40-year ban on crude oil exports. The crude oil provision emerged as a key Republican priority during negotiations. The various renewable electricity credits are currently scheduled to expire at the end of 2019 or 2021 and be repealed thereafter.)
- Permanently extend and modify the deduction for energy-efficient commercial building property (currently set to expire at the end of 2016).
- Extend the second-generation biofuel production tax credit at its current level of \$1.01 per gallon through 2022 and reduce the credit by 20.2 cents per gallon annually thereafter so that it would expire after December 31, 2026. (The credit is currently set to expire at the end of 2016.)
- Modify the tax credit for construction of energy-efficient new homes and extend it through 2026 (currently set to expire at the end of 2016.)

### **Congressional Republicans unimpressed**

As expected, Republican congressional leaders have indicated that the president's budget package will not move on Capitol Hill this year. In a statement released February 9, House Speaker Paul Ryan, R-Wis., dismissed the proposal as "a progressive manual for growing the federal government at the expense of hardworking Americans" and argued that [t]he president's oil tax alone would raise the average cost of gasoline by 24 cents per gallon, while hurting jobs and a major sector of our economy. Ryan subsequently declared the president's proposed oil "fee" to be "dead on arrival."

House Ways and Means Committee Chairman Kevin Brady, R-Texas, and Senate Finance Committee Chairman Orrin Hatch, R-Utah, offered similar assessments as their respective panels met at separate hearings to discuss the budget blueprint with Treasury Secretary Jacob Lew.

In his opening statement at the Ways and Means Committee hearing on February 11, Brady called the proposed oil fee "absurd" and advised Lew not to "spend too much time on it." He also declared himself "absolutely opposed to the president's plan to impose significant new taxes on small businesses by expanding the net investment income tax to all small business income."

At the Senate Finance Committee hearing on February 10, Chairman Orrin Hatch, R-Utah, likewise took aim at what he called "some special new regressive taxes that are being packaged as 'fees,' with all the revenue going to fuel expanded government and spending that is being sold to the public as 'investment.'"

**Inversions an opportunity for common ground?:** Brady and Hatch noted – and Lew agreed – that the administration and both parties in Congress were committed to addressing corporate inversions through tax reform and suggested that the issue potentially could provide a platform for a bipartisan agreement. (Brady said at the Ways and Means hearing that while "the tax increases in [the president's budget] proposal are dead, tax reform is very much alive.")

But it was unclear at either hearing whether Democrats and Republicans would be able to bridge the gap between their respective approaches.

Ways and Means Tax Policy Subcommittee Chairman Charles Boustany, R-La., told Lew that House taxwriters are committed to pursuing international tax reform “with urgency” and said the eventual plan likely would include, among other things, a cut in the corporate tax rate, a shift to a territorial system for taxing foreign-source income of US multinationals, and an innovation box that would provide a preferential tax rate for certain corporate income from patents and other intellectual property.

Lew stated that the administration was willing to work with the GOP on international reform, but noted that the administration has some reservations about an innovation box.

A potential obstacle to consensus discussed at both hearings was the continued insistence on the part of Democrats to use deemed repatriation revenue from international tax reform to pay for additional infrastructure spending. (The president’s budget once again proposes that the revenue raised from corporate tax reform be used to fund “a temporary near-term surge in [transportation infrastructure] investment.”)

Sen. Charles Schumer, D-N.Y., who co-chaired last year’s Finance Committee working group on international taxes, commended the budget proposals related to international reform as “very serious” and said he believes there is common ground to be found between Democrats and Republicans. He continues to support tying the reform efforts to infrastructure funding, but key Republicans – including Finance Chairman Hatch, Ways and Means Chairman Brady, and House Speaker Ryan – have been cold to the idea of using such tax revenue for spending rather than for lowering tax rates.

Sen. Dean Heller, R-Nev., asked Lew at the Finance hearing whether the deemed repatriation revenue might be directed elsewhere in light of the five-year transportation bill passed last fall, but Lew said that bill did not include sufficient funding.

Finance Chairman Hatch noted that he has been working on a corporate integration proposal – currently awaiting a revenue estimate from the Joint Committee on Taxation – that he believes will be effective at averting inversions and that he hopes the administration will consider with “an open mind” when it is released. Lew replied that that without seeing actual bill language it would be difficult to determine whether a corporate integration proposal could effectively address inversions, but said that he would review the legislation when it is available.

At both hearings, Lew emphasized the urgency of addressing inversion transactions – ideally in conjunction with tax reform; but he added that if a broad agreement on international reform proves to be impossible to achieve, Congress should instead pursue targeted legislation.

Lew told the Ways and Means panel that the Treasury Department has done all it can administratively to try to curb inversion transactions and that only legislation can bring them to a halt. Lew said that the consequences of delayed action would be “significant.”

**Brady elaborates on Ways and Means’ tax reform agenda:** Away from Capitol Hill, Ways and Means Chairman Brady elaborated on his panel’s tax reform agenda for the coming year

and beyond. In a speech at the Tax Council Policy Institute's 17th Annual Tax Policy & Practice Symposium on February 12, Brady indicated that the taxwriting panel will "move forward immediately to draft international tax reform legislation" while simultaneously leading "an inclusive GOP Conference-wide effort to produce a blueprint that details our consensus vision for comprehensive pro-growth tax reform."

**URL:** <http://waysandmeans.house.gov/brady-delivers-keynote-address-at-the-tax-council-policy-institute-symposium/>

Brady stated that although House taxwriters "understand the reality that comprehensive tax reform will not happen until we have a new president," he was hopeful that "next January we will have a president – Republican or Democrat – who is committed to making pro-growth tax reform a reality for the American people."

The panel's work on international reform, Brady explained, will be "a down payment that clears the way to focus on the work [of] lowering rates and simplifying the tax code for all businesses and individuals, so that we are ready to enact comprehensive tax reform in 2017."

As they contemplate tax reform, taxwriters intend to pursue a code that (1) is "simpler, fairer, and flatter"; (2) reduces rates by eliminating "loopholes," as well as unnecessary deductions, exclusions, and credits; (3) provides a competitive tax rate for all businesses regardless of whether they operate as C corporations or passthroughs; (4) taxes foreign-source income of US multinationals under a "territorial-type" system; (5) promotes economic growth; and (6) does not increase taxes to "bail out Washington's spending problem," Brady said.

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## **Bipartisan trade enforcement deal with permanent extension of Internet tax moratorium headed to White House**

The Senate voted 75-20 on February 11 to approve a bicameral conference agreement on a Customs overhaul and trade enforcement bill that includes a provision to permanently extend the current-law moratorium on state and local taxes on Internet access service. The Trade Facilitation and Enforcement Act of 2015 (H.R. 644), which cleared the House on December 11, now heads to the White House for President Obama's signature.

### **Internet tax moratorium**

The Internet tax moratorium – known officially as the Internet Tax Freedom Act (ITFA) – was originally enacted as a temporary measure in 1998 and has received multiple short- and long-term extensions since then. The latest extension, which was included in the combined extenders/omnibus appropriations package (H.R. 2029) enacted late last year, expires on October 1.

The original moratorium included a grandfather clause to give states that were then taxing Internet access some time to transition to other sources of revenue. To date, most of the

originally grandfathered states have discontinued taxing Internet access. H.R. 644 would require any remaining state-imposed Internet access taxes to be phased out by June 30, 2020.

**Remote sales provisions not included:** The conference agreement to H.R. 644 does not include provisions from the Marketplace Fairness Act (MFA) that are intended to make it easier for states to capture sales and use tax revenue from transactions involving on-line and other “remote” vendors that do not have an in-state physical presence. Disagreements over linking a permanent Internet tax moratorium with provisions to tax remote sales have in the past stymied efforts to move a permanent extension of the ITFA through the Senate. MFA supporters blocked Senate floor consideration of H.R. 644 last December by threatening to raise a point of order to strike the ITFA language from the underlying Customs legislation. Managers of the bill were worried about being able to muster the 60 votes needed to waive the point of order and keep the ITFA provision in the legislation, and the resulting standoff led to the short-term extension of the ITFA in the year-end extenders/appropriations package.

MFA supporters recently dropped their objections to the conference agreement after Senate Majority Leader Mitch McConnell, R-Ky., promised that he would hold a floor vote on the Marketplace Fairness Act later this year.

### **Increased failure-to-file penalty**

H.R. 644 also includes a revenue provision that would increase the penalty for failure to file a tax return more than 60 days after its due date to the lesser of \$205 or 100 percent of the amount required to be shown as tax on the return (from \$135 or 100 percent of the amount required to be shown as tax on the return under current law). The provision would be effective for returns required to be filed in calendar years after 2015.

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## **House bill calls for Treasury to provide advance notice on anticipated debt-limit defaults**

The House of Representatives voted 267-151 on February 11 to approve legislation that would require the Treasury Department to report to Congress prior to any date on which the Treasury secretary anticipates the public debt will reach the statutory limit and provide information detailing how the administration intends to address the issue.

The Debt Management and Fiscal Responsibility Act of 2015 (H.R. 3442) was introduced last September by House taxwriter Kenny Marchant, R-Texas, and cleared the Ways and Means Committee on October 7.

As approved, H.R. 3442 would require the Treasury secretary to appear before the House Ways and Means Committee and the Senate Finance Committee not more than 60 days and not less than 21 days prior to any date on which the Treasury secretary anticipates that the

nation will reach the debt limit. The information the Treasury Secretary would be required to present includes:

- A report to Congress on the state of the national debt, including its composition and trajectory, as well as the administration's plans to meet debt obligations in the event that Congress agrees to raise the debt limit.
- A statement of intent describing how the administration proposes to reduce the debt and the ratio of debt to gross domestic product. The statement also must address the impacts of the increased limit on factors such as our reserve currency status and the sustainability of entitlements.

The legislation also provides that when applicable, the Treasury secretary must present a progress report on the implementation of the statement of intent in subsequent appearances before the taxwriting panels.

The Treasury Department would be required to make the information it provides to Congress available to the public on the Treasury Web site.

### **On to the Senate**

H.R. 3442 now heads to the Senate, where the Finance Committee has so far not announced specific plans to take up the measure. At a February 10 Finance Committee hearing on the president's FY 2017 budget proposal, however, Chairman Orrin Hatch, R-Utah, appeared to suggest that Senate action on this issue may be forthcoming, though he did not specifically embrace the approach embodied in H.R. 3442.

Hatch told Treasury Secretary Jacob Lew that he has consistently been rebuffed when he has "asked Treasury and the Fed[ederal Reserve] for details about plans the agencies had to handle debt default, whether caused by a natural disaster, terrorist attack, cyberattack, or debt limit impasse." Hatch noted that "because we've received virtually no voluntary cooperation on this issue, legislation to require such cooperation and provide accountability is now probably necessary so the American people can know as much about our debt management as those working at Treasury and the Fed and in financial markets."

### **White House promises veto**

For its part, the Obama administration argued in a February 10 statement of administration policy that the legislation "would impose needless, redundant burdens" on the Treasury Department.

**URL:** [https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr3442r\\_20160209.pdf](https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr3442r_20160209.pdf)

"The administration already provides the information requested in H.R. 3442 in the form of the president's budget, the Mid-Session Review, the Daily Treasury Statement, the Monthly Treasury Statement, the Monthly Statement of Public Debt, the Schedule of Federal Debt, and the Financial Report of the United States Government. All of these reports are publicly available on the Internet. In addition, administration officials regularly make themselves available to testify before the Congress on the president's fiscal proposals and, in recent years, the Treasury secretary has also gone before the Congress to urge it to fulfill its responsibility to

raise the debt limit and underscore the potentially catastrophic consequences of failing to do so,” the statement said.

The statement indicated that the president’s senior advisors will recommend that he veto the bill if it reaches his desk.

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**Have a question?**

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