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GOP discord keeps fiscal 2017 budget process in flux

Reports this week suggested the House Budget Committee may consider a fiscal year 2017 budget resolution as early as March 15, but those plans could be upended by a lack of consensus among House GOP members on the contours of any tax-and-spending blueprint and a disinclination among Senate Republicans to take up their own plan anytime soon.

House GOP leaders search for budget consensus

House Speaker Paul Ryan, R-Wis., and Budget Committee Chairman Tom Price, R-Ga., have struggled for weeks to develop a budget resolution that the full House Republican Conference could rally behind – a task made more difficult this year by the confluence of several budgetary and political factors.

First and foremost has been opposition from the House Freedom Caucus (a group of roughly 40 of the chamber's most conservative members) to adhering to the top-line discretionary spending level set for fiscal year 2017 in the Bipartisan Budget Act of 2015.

That law, negotiated last fall primarily by President Obama and then-Speaker John Boehner, R-Ohio – who resigned from Congress shortly thereafter – raised the statutory caps on discretionary spending (known as the "sequester") for two years, in equal amounts for both defense and nondefense accounts, in exchange for savings generated elsewhere in the budget. The total increase for fiscal year 2017 was $30 billion. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 37, Oct. 30, 2015.)
URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/151030_1.html

Members of the Freedom Caucus generally want to return fiscal 2017 discretionary spending to the sequester level. But reneging on the Obama-Boehner deal is viewed as a nonstarter by congressional Democrats – and even some defense-minded Republicans. And party leaders on both sides of the aisle acknowledge that Senate Democrats would filibuster any appropriations bills written to that lower level, increasing the likelihood that lawmakers would have to move an “omnibus” appropriations bill later this year – an outcome that most policymakers want to avoid.

Brady targets ‘improper’ payments in tax code to help avert stalemate

During a meeting of the House Republican Conference on March 3, Ryan and Price discussed a series of proposals – from budget reconciliation instructions that could avoid a Democratic filibuster in the Senate, to budget process reforms, to promises to attach Republican policy riders to appropriations bills – designed to help bring Freedom Caucus members on board with a budget resolution that adheres to the Bipartisan Budget Act.

Among the proposals discussed was the idea of moving separate legislation that would include $30 billion in savings from nondiscretionary programs over two years – enough to offset the Obama-Boehner discretionary spending increase for fiscal 2017. The so-called legislative “side-car” could move in conjunction with the budget resolution.

The same day that Ryan and Price met with House GOP members, Ways and Means Committee Chairman Kevin Brady, R-Texas, hinted to reporters that reducing “improper” tax-related payments could help meet that $30 billion savings target.

“We’re going after a lot of improper payments within the tax code, and savings we know are proven both this year and next year, as well as long term,” Brady said.

Brady made good on that statement March 10, when he outlined a handful of budget proposals that he said would save $16.5 billion over two years and $98 billion over the next decade. Two of the proposals call for new tax compliance rules that would:
URL: http://waysandmeans.house.gov/brady-highlights-budget-savings-package-to-decrease-national-debt-fight-fraud/

- Require parents to provide Social Security Numbers in order to claim the refundable portion of the child tax credit and
- Require individuals who receive overpayments of health care exchange subsidies under the Patient Protection and Affordable Care Act to reimburse the government for the full amount of the overpayment. (Current law limits the reimbursement amount for certain taxpayers with household income below 400 percent of the poverty line.)

A third – nontax – proposal would repeal funding for the Social Services Block Grant program.

“I look forward to moving these commonsense bills through our committee and the House in the weeks ahead,” Brady said in a statement accompanying the proposals. “The Ways and Means Committee will continue to take action to protect taxpayer dollars and make government programs more accountable.”

Senate GOP: Appropriations process to proceed with or without budget

Across the Capitol, Senate Republicans have cast doubt on whether they will move their own fiscal 2017 budget at all, noting that enactment of the Bipartisan Budget Act last year reduces the necessity of drafting a budget resolution.

"The Senate Budget Committee will continue to discuss the budget as well as improvements to the budget process…," Chairman Mike Enzi, R-Wyo., said in a statement March 7. "The Senate already has top-line numbers and budget enforcement features available this year so that a regular order appropriations process can move forward while we continue to discuss broader budget challenges."

Senate Majority Leader Mitch McConnell, R-Ky., echoed Enzi's comments on March 8, stating that Republicans will "be using the top-line that was agreed to last year in order to move forward on the Senate appropriations bills."

House "side-car" idea gets dinged: Meanwhile, some senators have expressed concern about the House's idea of a legislative "side-car" that would trim nondiscretionary spending by $30 billion.

"It'd be fine with me, but I would not expect we'd likely have the time to do that," noted Sen. Roy Blunt, R-Mo.

And Democrats would likely oppose the approach on the grounds that the higher fiscal 2017 discretionary spending level was already paid for through other measures included in the Bipartisan Budget Act.

"I don't see how that can be reconciled with the agreement that we've reached," noted Sen. Richard Blumenthal, D-Conn.

No Senate budget means no budget reconciliation: One noteworthy result if the Senate does not move its own budget resolution – or cannot reach agreement with the House on a blueprint – is that there would be no opportunity to move subsequent legislation under the so-called "budget reconciliation" process. (If included in a congressionally adopted budget resolution, reconciliation instructions provide a fast-track procedure that limits debate in the Senate and allows for passage of certain legislation in that chamber by a simple majority vote, as opposed to the 60 votes normally required to clear procedural hurdles – a potentially useful tool for Republicans, who currently hold 54 Senate seats.)

Congressional Republicans utilized the budget reconciliation process last year to avoid a Democratic filibuster of a bill to repeal key components of the Patient Protection and Affordable Care Act. (For prior coverage, see *Tax News & Views*, Vol. 17, No. 2, Jan. 8, 2016.) Although President Obama vetoed the repeal measure – an outcome that was expected – the reconciliation process has been discussed again as an avenue for Senate Republicans to bypass a filibuster on contentious deficit-reduction proposals this year – or potentially to use early next year to fast-track another bill repealing key parts of the Affordable Care Act and deliver it to a new president who GOP lawmakers hope will be inclined to sign it into law.
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160108_1.html

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Lew calls for legislation to address inversions

Treasury Secretary Jacob Lew urged Congress March 8 to pass legislation to stop corporate inversions, arguing that the action taken by some companies “may be legal, but it’s not right.”

Lew, who spoke at a Senate Appropriations Financial Services and General Government Subcommittee hearing to discuss the administration’s proposed fiscal year 2017 budget for the Treasury Department and Internal Revenue Service, also pressed the case that lawmakers need to fully fund IRS enforcement efforts in order to stem revenue losses from lax taxpayer compliance.

Inversions

Repeating comments he has made several times in the past year, Lew responded to a question from Sen. Richard Durbin, D-Ill., by saying that he believes Treasury’s guidance on inversions has helped lower the number of these transactions and that “additional action” by Treasury is under consideration. But he insisted that only Congress can decisively stop US companies from moving their headquarters overseas.

“Through administrative actions we can’t shut the door to inversions,” Lew said. “It would take legislation to do that, and I think Congress should legislate to do that.”

Lew added that business tax reform legislation that lowers the statutory rate, broadens the base, and imposes a minimum tax on foreign-source income of US multinationals would be ideal. The Obama administration proposed a minimum tax on foreign-source income in the business tax reform framework it released in 2012, although at the time it did not specify a rate. The White House subsequently called for a rate of 19 percent in its budget blueprints for fiscal years 2016 and 2017.

Democratic anti-inversion proposals: Several proposals specifically targeting inversion transactions have been introduced or are in the works on the Democratic side of the aisle in Congress this year. Senate Finance Committee Democrats Sherrod Brown of Ohio, and Charles Schumer of New York introduced two such measures on March 10:

- The Pay What You Owe Before You Go Act (S. 2662), which, according to a release from Brown’s office, would “require corporations who want to shift their headquarters overseas for tax purposes to pay their full US tax bill on all deferred overseas profits before reincorporating in a new country” and
- The Corporate Inverters Earnings Stripping Reform Act (S. 2666), which would “limit companies’ ability to strip future US earnings out of the country tax-free through excessive use of the interest expense deduction.”

Finance Committee ranking Democrat Ron Wyden of Oregon recently indicated that he intends to introduce his own proposal "to crack down on inversions and tax games to preserve our tax base for broader reform" but has provided no details on when that legislation will be introduced or what provisions it might include.

In the House, Ways and Means Committee ranking Democrat Sander Levin of Michigan and House Budget Committee ranking Democrat Chris Van Hollen of Maryland introduced legislation last month that proposes to curb earnings stripping transactions by certain "inverted" companies by tightening the rules under section 163(j).

Legislative action unlikely: None of these proposals currently appears likely to be taken up in either congressional taxwriting committee. Republican leaders have stated that they would prefer to address inversions in the context of broader tax reform legislation that lowers the corporate tax rate, but they have also indicated that they do not expect to move their vision of tax reform while President Obama is in office.

Ways and Means Tax Policy Subcommittee Chairman Charles Boustany, R-La., is in the process of developing a discussion draft of an international tax reform bill that is likely to include 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. But according to Ways and Means Chairman Kevin Brady, R-Texas, Boustany's effort is intended to pave the way for congressional action on comprehensive tax reform under a new presidential administration in 2017.

In the most recent example of the gulf between the Obama administration and key congressional taxwriters on corporate tax reform, White House Council of Economic Advisers Chairman Jason Furman commented in a March 11 speech at Georgetown University that "[a]dopting an innovation box would move tax policy in the wrong direction, increasing complexity and cost without a commensurate boost to innovation." According to Furman, an innovation box, if adopted, would give corporations "strong incentives to attribute as much income as possible to the tax-favored innovation to take advantage of preferential tax rates" which in turn "would lead to disputes between the Internal Revenue Service and taxpayers." (Support for an innovation box in Congress does not break entirely along party lines. Ways and Means Committee Democrat Richard Neal of Massachusetts, for example, collaborated with Boustany on a discussion draft of an innovation box proposal last summer. In the Senate, taxwriters Charles Schumer and Rob Portman, R-Ohio, who last year co-chaired the Finance Committee's bipartisan working group on business tax reform, recommended the adoption of a patent box, although they stopped short of offering a legislative proposal.)
URL:
https://www.whitehouse.gov/sites/default/files/docs/20160311_innovation_and_tax_policy_itpf.pdf

For his part, Senate Finance Committee Chairman Orrin Hatch, R-Utah, has stated that the corporate integration proposal he intends to unveil in the coming months could provide an interim fix that would allow Congress to address inversions while it pursues a larger tax code overhaul.

IRS budget

Also at the Appropriations subcommittee hearing, Treasury Secretary Lew warned that what the administration sees as continued underfunding of the IRS by Congress will result in long-term problems for the fisc.

The agency is requesting a total funding increase of about $1 billion for fiscal 2017 – on top of the $290 million boost it received for fiscal 2016, its first significant increase in six years. Of that increase, $515 million is specifically requested for the IRS's enforcement division, which oversees efforts to increase enforcement of current tax laws, investigate transnational organized crime, and enforce the Foreign Account Tax Compliance Act (FATCA). Since sequestration was enacted, the administration has argued that the IRS's enforcement activities should be exempt from the spending caps imposed under the Budget Control Act and the Bipartisan Budget Act because of the additional revenue that increased enforcement should bring in to reduce the tax gap (the difference between the amount of taxes owed to the government and the amount actually paid).

"If we don't have the resources to hire the enforcement officers that we need, the tax gap will only grow," Lew told the Appropriations panel. "Because we know that when you put resources into enforcement you find cases of tax avoidance. And when you find cases of tax avoidance, voluntary compliance goes up because people don't want to get caught."

IRS Commissioner John Koskinen and Treasury Inspector General for Tax Administration J. Russell George, who also appeared before the subcommittee, echoed Lew's comments about the need for increased IRS funding. Koskinen noted that an increased budget for enforcement would allow the IRS to handle more than 30,000 additional collection cases; close more than 32,000 additional individual audits; expand the Automated Underreporter program to process more than 400,000 additional cases; and implement a quality review program for penalty and interest.

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