



Tax

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Energy tax extender talks collapse, Senate set to approve 'clean' FAA tax title

Senate negotiations to include extensions of certain expiring alternative energy provisions and other tax provisions in the tax title of legislation to reauthorize the Federal Aviation Administration (FAA) broke down this week, and the chamber now appears poised to approve a “clean” bill that would extend FAA-related excise taxes through fiscal year 2017.

Too big to succeed

Top Senate lawmakers from each party had been trying to strike a deal that would extend a handful of alternative energy incentives that are scheduled to expire at the end of 2016 – the investment tax credits under section 48 for combined heat and power property, fuel cell property, small wind property, and geothermal property – along with broader legislation that would reauthorize FAA-related programs and renew the dedicated excise taxes on passengers, cargo, and fuel that are set to lapse after July 15, 2016.

Senate Democrats, particularly Minority Leader Harry Reid of Nevada and Finance Committee ranking member Ron Wyden of Oregon, argued the provisions were supposed to receive a long-term renewal in the massive tax extenders legislation enacted last December (the Consolidated Appropriations Act, 2016/Protecting Americans from Tax Hikes Act of 2015), which made a number of expired business, individual, and charitable giving incentives permanent; extended a handful of provisions for five years; and renewed others through the end of 2016. Reid and Wyden attributed the omission to an inadvertent drafting error, and noted that the legislation provided a long-term extension for the section 48 investment tax credit for business solar property. By late last week, it appeared Majority Leader Mitch McConnell, R-Ky., and Finance Committee Chairman Orrin Hatch, R-Utah, were in agreement

with Reid and Wyden. (For prior coverage, see *Tax News & Views*, Vol. 17, No. 14, Apr. 8, 2016.)

[URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160408_2.html](http://newsletters.usdbriefs.com/2016/Tax/TNV/160408_2.html)

However, those talks ultimately collapsed under their own weight this week as a broader set of lawmakers came to view the must-pass FAA bill as one of the few remaining vehicles (if not *the* only remaining vehicle) for tax legislation this year, and sought to attach their own favored tax provisions to it. Reports indicated that lawmakers on both sides of the aisle were seeking to add provisions as varied as extending incentives for biofuels and carbon capture and sequestration, lowering excise taxes on craft brewers and producers of certain other alcohols, and redirecting state and local excise taxes on car rentals to the federal Airport and Airway Trust Fund.

After a meeting of the full Senate Republican caucus on April 12, Majority Leader McConnell announced that a decision had been made to “skinny down” the tax title of the FAA bill. As a result, a substitute amendment offered by Sen. John Thune, R-S.D. – a Finance Committee member who also chairs the Commerce, Science, and Transportation Committee, which has jurisdiction over the FAA bill – includes only a straight extension through September 30, 2017, of the excise taxes on passengers, cargo, and fuel that provide the dedicated revenue stream for the Airport and Airway Trust Fund.

The Senate is not expected to vote on final passage of the bill until the week of April 18.

Pointing fingers

McConnell’s decision to abort the efforts at a tax extenders deal prompted a round of partisan barbs.

In a statement on the Senate floor April 13, Finance Committee Chairman Hatch remarked that “[a]s we were working through the process..., it became clear that my friends on the other side of the aisle saw the bill as an opportunity to add a number of extraneous items – provisions that had nothing whatsoever to do with the FAA....”

For his part, Minority Leader Reid laid the blame on Republicans.

“All we wanted was [the section 48 energy tax credits] put in the tax portion of the FAA bill,” Reid told reporters on April 12. “We didn’t go for beer or distilled spirits, we didn’t go for rental cars, we didn’t go for all that garbage. That was all them, not us.”

Reid was ambivalent on the issue of whether the Senate would revisit the section 48 provisions later this year.

“[McConnell] says he’ll do it later. We’ll see what happens,” Reid said.

House GOP not keen on extenders

Even if the Senate had been able to agree on including energy extenders and other tax provisions in the FAA bill, it remains unclear whether the combined package would have been accepted in the House.

Several House conservatives – including Ways and Means Committee Chairman Kevin Brady, R-Texas, and Ways and Means Tax Policy Subcommittee Chairman Charles Boustany, R-La. – have expressed opposition in recent weeks to reopening the debate over expiring tax provisions, which they believe was settled with the enactment of last year’s extenders deal.

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Ways and Means subcommittee hears more reform proposals

The House Ways and Means Tax Policy Subcommittee heard from Reps. Bob Goodlatte, R-Va., and Roger Williams, R-Texas, as part of an April 13 “members day” hearing on fundamental tax reform.

This was the second in a series of hearings the subcommittee has planned to give House members – including those who are not taxwriters – an opportunity to present tax reform proposals that they have either sponsored or co-sponsored. The first hearing, which addressed cash-flow and consumption-based proposals, was held last month. (For prior coverage, see *Tax News & Views*, Vol. 17, No. 13, Mar. 25, 2016.)

[URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160325_2.html](http://newsletters.usdbriefs.com/2016/Tax/TNV/160325_2.html)

“Our efforts on tax reform require that we take a fresh look and consider all ideas and proposals,” Subcommittee Chairman Charles Boustany, R-La., said in his opening statement. “Ultimately, the Ways and Means Committee must weave the most pro-growth concepts and ideas into a bold plan that fundamentally and comprehensively reforms our tax system.”

Tax Code Termination Act

Goodlatte’s bill, the Tax Code Termination Act (H.R. 27), would sunset the current tax system in its entirety at the end of 2019 and require Congress to put in place a new system by July 4, 2019. The bill does not specify what form the new system should take, other than broadly requiring that it should not penalize marriage or family and should eliminate the bias against saving and investment. Although the bill has 130 co-sponsors – including Ways and Means Chairman Kevin Brady, R-Texas, Tax Policy Subcommittee Chairman Boustany, and several other Republican taxwriters – it is viewed as a symbolic piece of legislation to emphasize what many see as the urgent need for comprehensive tax reform.

Subcommittee member Jim Renacci, R-Ohio, expressed skepticism that Congress would have the will to meet a set deadline for sunseting the tax code. Goodlatte, however, responded that “[c]omprehensive tax reform will not come overnight, but we should not delay taking a first step. Setting a date certain to implement a new tax system by 2020 will provide a real timeline for debating and approving a new tax system for our nation.” Goodlatte also noted that the bill

would require a two-thirds vote in Congress to extend the deadline for terminating the current tax code.

'Jumpstart America'

Williams' proposal consists of a number of individual bills combined into a package that he calls "Jumpstart America." His reform plan calls for two individual rate brackets (20 percent and 30 percent), a corporate rate of 20 percent, lower rates on capital gains and dividends, permanent 100 percent bonus depreciation, a 5 percent repatriation rate, repeal of the estate tax, a 2 percent payroll tax cut for both employees and employers, and retaining last-in-first-out (LIFO) accounting.

In response to one of the few questions asked during the short hearing, Williams said that his plan has been "unofficially dynamically scored" and is projected to show a revenue loss in the first two years but revenue growth over the remainder of the budget window.

A bold plan, still in the making

Republicans, led by House Speaker Paul Ryan, R-Wis., have made clear that they see no chance for comprehensive tax reform under President Obama but have framed 2016 as a year in which they will develop a proposal that will be ready for the next administration. With Ryan's experience as the former chairman of the Ways and Means Committee and his launch of a tax reform task force – led by Chairman Brady – which gives members not on the taxwriting committee an opportunity to provide input, the House Republican Conference has said its goal is to release a "pro-growth" policy agenda before July's Republican National Convention. (In addition to tax, the party's agenda will focus on issues including national security, health care reform, poverty, and regulations.)

Earlier this year, Brady and Boustany both set a goal of bringing an international tax reform bill through the Ways and Means Committee; but Brady told reporters this week that there is currently no timetable to release a draft.

Based on recent comments from members of the Ways and Means Committee and tax staffers and the ongoing activity of the House task force, there is speculation that an international proposal may now simply become part of the broader Republican tax reform agenda to be presented this summer, without specific legislative language.

In a speech at the US Chamber of Commerce on April 15, Brady said the committee and task force discussions on tax policy have been "very positive"; but he did not mention any planned legislative action for the taxwriting panel.

"By June, [House Republicans] intend to produce a consensus blueprint for comprehensive tax reform," he said, referring to the broad pre-convention agenda envisioned by Speaker Ryan.

— Storme Sixeas
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House taxwriters consider tax treatment of health care

Republicans and Democrats at an April 14 House Ways and Means Committee hearing agreed that changes are needed to the tax treatment of health care, but were unable to reach consensus on how much change or what to change.

21st century work force issues

One of the hearing's overarching themes was how to modernize the taxation of health benefits to more closely fit the workforce of the 21st century in which workers frequently change jobs – and health care plans.

Many at the hearing voiced a desire to allow employees to keep coverage they like, rather than let it go when they leave their current employer. Ways and Means Committee Chairman Kevin Brady, R-Texas, referred to a “health care backpack” that each American would carry over the course of his or her life, containing a health care plan, some sort of individual health savings account (HSA), and medical records. A mobile system like this, he contended, would better suit the 21st century workforce and allow people to retain consistent levels of health care coverage.

Employer-based model

Much of the discussion related to issues around the employer-based model for providing health care – the backbone of our current system – which dates back to the Second World War. Employers are able to deduct from their taxable income the amount they pay for health care coverage for employees. In addition, employees do not claim this benefit as income. Combining the two, the exemption for health care is one of the most expensive expenditures in the US tax code.

Many subcommittee members and witnesses at the hearing attributed the rapidly rising costs of health care to this benefit, which they believe encourages employers to provide overly generous health care coverage. They also expressed concern about the lack of transparency in the current system, which shields employees from knowing the true cost of their health care and, as a result, can discourage them from seeking the most cost-effective medical treatments because their out-of-pocket payments are so small.

All the witnesses at the hearing strongly advocated closing this information gap, offering widely differing views on how to increase consumer involvement and create a market-driven system for health care. Most subcommittee members – including Brady and Ways and Means ranking Democrat Sander Levin of Michigan – appeared to favor keeping an employer-based model, as employers can leverage economies of scale to get reduced plan pricing that individuals could not. Others said changes were necessary to increase transparency and broaden the options available to employees.

“I cannot emphasize enough: the employer-sponsored health insurance market is a vital one,” Brady said. “The question we must wrestle with is how we can sustain this option while

advancing reforms that make the tax code fairer and health care more affordable for all Americans.”

Market-based system

Some members of the panel proposed moving away from the employer exemption altogether and adopting a market-based method with tax credits to incentivize and subsidize individuals buying their own health care coverage. Under this type of system, consumers would be much more informed of the actual costs associated with their care, similar to other insurance products such as automotive or home insurance.

Avik Roy of the Manhattan Institute, who appeared as a witness at the hearing, discussed Switzerland’s health care system, in which individuals buy private insurance in a regulated market. According to Roy, this system allows for the consumerism and competition that many members argued is necessary to drive down costs.

HSAs

The panel and witnesses also discussed options for individuals to purchase plans with less coverage, higher deductibles, and corresponding HSAs.

Ranking member Levin and other Democrats on the panel, including Reps. Jim McDermott of Washington and Richard Neal of Massachusetts, noted that HSAs generally go hand in hand with high-deductible health care plans, which they view as beneficial to younger, healthier people but not as helpful to lower-income households or the elderly.

And while panel Democrats argued that HSAs primarily benefit the upper end of the income spectrum because, in their view, the accounts can be used to shield income from taxation, Republicans such as Rep. Erik Paulsen of Minnesota countered that HSAs and similar vehicles could help lower-income people save more for health care emergencies as well as develop wealth for retirement.

Deduction caps

An idea proposed to retain employer-based health care but reduce spending is to cap the amount of health insurance premium an employer can deduct per employee.

In response to a question from Brady, Joseph Antos of the American Enterprise Institute argued that caps would force employers, the primary buyers of large group plans, to spend less on insurance plans, which would in turn force insurance companies to reduce their prices.

But Levin, along with Steven Kreisberg of the American Federation of State, County, and Municipal Employees, argued that caps would backfire – that is, the cost of the caps would not reduce what employers buy but rather would result in higher costs being passed along to employees. Others on the dais mirrored that concern, arguing that employees expect a certain level of coverage and would thus be forced to pay for it themselves if employers did not.

‘Cadillac’ tax

Similarly causing debate was the so-called “Cadillac” tax, which is levied on employers offering plans that provide what are viewed as overly generous benefits. The Cadillac tax was enacted part of the Patient Protection and Affordable Care Act of 2010 (although it does not take effect until 2020 as a result of a two-year delay enacted in last December’s extenders bill).

Many Republicans on the panel argued the Cadillac tax is regressive and that associated costs are passed along to employees at all income levels – a concern that has also been raised in the past by some Democrats.

Rep. Dave Reichert, R-Wash., expressed concern that because the threshold for the Cadillac tax does not adjust for the cost of living or for geographic variations in the cost of health care coverage, the tax would 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.

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Brady, Hatch introduce technical corrections legislation

House Ways and Means Committee Chairman Kevin Brady, R-Texas, and Senate Finance Committee Chairman Orrin Hatch, R-Utah introduced identical bills in their respective chambers on April 11 that would make a variety of technical changes and clarifications to provisions included in recently enacted tax legislation.

The bulk of the provisions in the Technical Corrections Act of 2016 (H.R. 4891, S. 2775) address the Consolidated Appropriations Act, 2016/Protecting Americans from Tax Hikes (PATH) Act of 2015, the massive appropriations and extenders package that was enacted late last year. Among other things, the measure proposes clarifications to the permanent research credit and five-year bonus depreciation rules included in the PATH Act.

URL: <https://www.congress.gov/114/bills/hr4891/BILLS-114hr4891ih.pdf>

The technical corrections legislation also proposes modifications to certain provisions in the:

- Fixing America’s Surface Transportation Act (2015);
- Surface Transportation and Veterans Health Care Choice Improvement Act of 2015;
- ABLE Act of 2014;
- American Taxpayer Relief Act of 2012; and
- The United States-Korea Free Trade Implementation Act (2011).

A technical explanation of the provisions in the bill is available from the Joint Committee on Taxation staff.

URL: <https://www.jct.gov/publications.html?func=startdown&id=4882>

It is currently unclear how the taxwriting chairmen intend to move the legislation through Congress. Although it was rumored this week that S. 2775 could be added to a measure currently under consideration in the Senate to reauthorize spending authority and the dedicated revenue stream for the Federal Aviation Administration (FAA), it did not appear at press time as though lawmakers in that chamber were planning to tie the two bills together. (See separate coverage in this issue for additional details on the FAA legislation.)

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