



Tax

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Hatch eyes June release of corporate integration draft

Senate Finance Committee Chairman Orrin Hatch, R-Utah, said this week that his discussion draft of a corporate integration proposal could be ready for release in June.

Hatch first announced that he was working on the draft in January. He initially suggested that the draft would be ready in March and subsequently revised the target date to sometime in May. (For prior coverage, see *Tax News & Views*, Vol. 17, No. 4, Jan. 22, 2016, and *Tax News & Views*, Vol. 17, No. 9, Mar. 4, 2016.) But Hatch indicated in an April 21 interview that he is awaiting a revenue estimate from the Joint Committee on Taxation (JCT) staff and that the JCT score likely would not be complete until the end of May.

[URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160122_1.html](http://newsletters.usdbriefs.com/2016/Tax/TNV/160122_1.html)

[URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160304_1.html](http://newsletters.usdbriefs.com/2016/Tax/TNV/160304_1.html)

Hatch also told reporters April 21 that he intends for the plan to be revenue neutral; but otherwise he has been tight-lipped on specifics. The draft reportedly will call for giving corporations a deduction for dividends paid out to shareholders, a change that Hatch in the past has argued would lower the effective tax rate for corporations – thus deterring further corporate inversions and foreign corporate takeovers of US companies – and may be less challenging to accomplish than a statutory corporate rate cut, making it a possible interim fix as taxwriters pursue comprehensive tax reform. (For prior coverage, see *Tax News & Views*, Vol. 17, No. 9, Feb. 26, 2016.) Such a change, if proposed, also would likely revise the tax treatment of dividends received by corporate shareholders, including currently tax-exempt entities.

[URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160226_1.html](http://newsletters.usdbriefs.com/2016/Tax/TNV/160226_1.html)

Finance plans hearing on business tax reform

Also this week, the Finance Committee announced that it will hold a hearing to “explore ways Congress can reform the business tax code to make it more globally competitive.” The hearing is scheduled for April 26 at 10:00 a.m.

“As the Finance Committee continues to lay the groundwork for a comprehensive tax overhaul, we should explore policies that will make America the best place for business and job creation,” Hatch said in an April 19 news release. “Be it through leveling the playing field on the taxation of business income, lowering the corporate rate, or removing complexity and encouraging certainty in the code, more must be done to make the tax system for America’s job creators, including our valued passthrough entities, competitive in today’s global economy.”

Witnesses will include Thomas Barthold, chief of staff of the JCT; James R. Hines, Jr., an economics professor at the University of Michigan in Ann Arbor; Eric Toder of the Urban-Brookings Institute Tax Policy Center in Washington; Sanford E. Zinman of Sanford E. Zinman, CPA, PC, in Tarrytown, N.Y.; and Gayle Goschie of Goschie Farms, Inc., in Silverton, Ore.

Business tax reform working group report on the agenda: Among the topics to be covered at the hearing is a report released last July by the Finance Committee’s bipartisan working group on business tax reform, which was co-chaired by Sens. John Thune, R-S.D., and Ben Cardin, D-Md. Although the report makes no specific recommendations for business tax reform, it highlights two “threshold issues” that the working group viewed as key to the success of any reform plan: lowering the corporate tax rate and treating passthrough businesses equitably. It also offers a lengthy discussion of the challenges inherent in lowering the corporate tax rate in a revenue neutral way and details the options and trade-offs for base broadening.

URL:

<http://www.finance.senate.gov/imo/media/doc/The%20Business%20Income%20Bipartisan%20Tax%20Working%20Group%20Report.pdf>

The business tax reform panel was one of five bipartisan Finance Committee working groups that Hatch and ranking Democrat Ron Wyden of Oregon convened last year to consider issues involved in overhauling discrete areas of the tax code. (The other four working groups addressed international tax reform, the individual income tax, community development and infrastructure, and savings and investment. For an overview of the working group process and summaries of the working group reports, see *Tax News & Views*, Vol. 16, No. 23, July 10, 2015.)

URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/150710_1.html

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FAA reauthorization bill clears Senate

The Senate voted 95-3 on April 19 to pass legislation that would renew through fiscal year 2017 spending authority for the Federal Aviation Administration (FAA) and the FAA-related excise taxes on passengers, cargo, and fuel that provide the dedicated revenue stream for the Airport and Airway Trust Fund.

No energy extenders

Passage of the bill had been slowed down this month while Senate leaders negotiated the potential inclusion of provisions to extend certain expiring alternative energy tax incentives. However, after the sought-after additions of other tax provisions became too numerous, discussions ended and the bill was passed without the unrelated tax measures. (For prior coverage, see *Tax News & Views*, Vol. 17, No. 15, Apr. 15, 2016.)

[URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160415_1.html](http://newsletters.usdbriefs.com/2016/Tax/TNV/160415_1.html)

Although Senate Majority Leader Harry Reid, D-Nev., told reporters April 19 that he expects to see action on the energy extenders before the end of the year, there is not a clear path to enactment, given the lack of support for the provisions so far in the House and the limited number of tax bills that are expected to move through Congress in the coming months.

Back to the House

Attention now turns back to the House, which must pass its own FAA legislation and reach agreement with the Senate on a single bill before the current authorization expires on July 15, to avoid the need for another short-term extension.

House Transportation Committee Chairman Bill Schuster, R-Pa., said in a statement released April 19 that the chamber “will take a look at the completed [Senate] product, but...will continue to push forward with” the Aviation Innovation, Reform, and Reauthorization Act (H.R. 4441), which his committee approved in mid-February.

Shuster’s bill, which would reauthorize the FAA for six years, differs from the Senate’s legislation in several key policy areas, including a controversial provision 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. The measure has so far failed to take off in the House, in part because of concerns about the impact that a shift to user fees would have on the jurisdiction of congressional taxwriters over FAA funding in the future.

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Senate taxwriters OK bills to prevent tax-related ID theft, make tax administration changes

The Senate Finance Committee on April 20 approved legislation containing numerous provisions aimed at preventing tax-related identity theft and refund fraud as well as a separate bill that would make several changes to IRS tax administration.

‘Hackers and crooks’

In opening the mark-up, Finance Committee Chairman Orrin Hatch, R-Utah, noted the ongoing threat to taxpayers and the IRS posed by identity theft and data breaches.

“According to the American Institute of Certified Public Accountants, 63 percent of CPAs...said that at least one of their clients was a victim of tax identity theft in the 2015 filing season,” Hatch stated. “And, with the theft of sensitive taxpayer information at large retailers, insurers, and other entities across the United States, as well as the recent breach of the IRS’s Get Transcript and IP PIN [identity protection personal identification number] tools, we will almost certainly see this trend continue in the future unless further action is taken.”

Ranking Democrat Ron Wyden of Oregon agreed, noting “every new headline about hackers and crooks stealing taxpayer dollars and personal data is a reminder there’s a lot more to be done on this front.”

The Finance Committee legislation – which was approved by voice-vote and remained unnamed at the time of its mark-up – includes provisions that, among other things, that would:

- Strengthen rules governing the required electronic filing of tax returns;
- Require the Treasury Secretary to make available, by January 1, 2021, a Web site that allows taxpayers to prepare, file, and distribute Forms 1099;
- Increase the civil and criminal penalties under sections 6713 and 7216, respectively, that apply to preparers who improperly disclose taxpayer information; and
- Require the IRS to notify taxpayers of suspected identity theft (which is information that is currently protected from disclosure under section 6103), and provide information about filing a police report and forms the taxpayer must submit to allow law enforcement access to the taxpayer’s personal information.

A full description of the bill (JCX-108-15), along with summaries of the modifications made by Chairman Hatch prior to its mark-up (JCX-27-16 and JCX-28-16), are available from the Joint Committee on Taxation (JCT) staff.

URL: <http://www.finance.senate.gov/imo/media/doc/JCX-108-15%20%20Chairman's%20Mark.pdf>

URL: <http://www.finance.senate.gov/imo/media/doc/JCX-27-16%20%20ID%20theft%20-%20First%20Modification.pdf>

URL: <http://www.finance.senate.gov/imo/media/doc/JCX-28-16%20%20ID%20theft%20-%20Second%20Modification.pdf>

‘Paid preparer regulation’ provision dropped from chairman’s mark: This was actually the Finance Committee’s second attempt to pass legislation combatting tax-related identity theft and refund fraud, after an initial mark-up scheduled during September 2015 was scuttled due to concerns – on and off Capitol Hill – about a proposal included the bill that would grant the IRS authority to regulate paid tax return preparers.

In 2011, the IRS had issued rules that would regulate individuals not otherwise covered under Treasury Department Circular 230 (e.g., attorneys, CPAs, and enrolled agents) – which governs practice before the IRS – by requiring them to pass a competency exam, attend continuing education courses, and obtain a preparer tax identification number (PTIN) in order to prepare returns for compensation. But the US District Court for the District of Columbia ruled that IRS and Treasury did not have sufficient basis in statute to issue such regulations, and the decision was subsequently affirmed on appeal by the US Court of Appeals for the D.C. Circuit.

In the legislation originally scheduled for mark-up last September, Chairman Hatch included language intended to clarify the authority of Treasury and the IRS to regulate paid preparers. But misgivings among stakeholders and lawmakers about how the proposal was drafted prompted Hatch to call off that earlier mark-up.

Hatch did not include the provision in the legislation he put before the Finance Committee this week, but ranking member Wyden attempted to amend the bill with a similar provision that he had modified in a way that he said had garnered the support of outside stakeholders.

“After the last mark-up was canceled, we went to great lengths to address all the concerns that members heard from outside groups, including one representing certified public accountants,” Wyden said. “They’ve got a lot of well-meaning members with legitimate concerns. And after the work we put in to address those concerns, they fully support my amendment.”

But Wyden’s amendment failed on a party-line vote, after Republicans argued that the provision – despite Wyden’s modifications – would doom the bill’s chances on the Senate floor.

“The decision today doesn’t take this issue off the table, at least from my perspective,” said Sen. Dan Coats, R-Ind. “But it’s clear to me that adoption of this would undermine our ability to take this all the way through the Senate....”

Taxpayer Protection Act of 2016

Later in the day, the Finance Committee also approved by voice-vote a separate piece of legislation, the Taxpayer Protection Act of 2016, which would make several changes to IRS tax administration. Notable provisions in that bill would:

- Extend to two years (from nine months) (1) the period for the IRS to return funds from the sale of property that was subject to a wrongful levy, and (2) the period for bringing a civil action to contest an IRS levy;
- Allow funds withdrawn from an individual retirement arrangement (IRA) or employer-sponsored plan as the result of a wrongful levy to be recontributed – along with the related interest paid by the government – to the original IRA or employer plan (or to another account for which a rollover would be permissible), without regard to otherwise applicable rules governing contributions and rollovers;
- Clarify the rules around equitable relief from joint liability to provide that (1) in considering a claim for equitable relief, the Tax Court is not limited to a review of the administrative record but may also consider newly discovered or previously unavailable evidence; (2) the Tax Court has jurisdiction to redetermine equitable claims for relief from joint liability and is not limited to a review for abuse of discretion by the IRS; and

(3) taxpayers may request equitable relief with respect to any unpaid liability before the expiration of the collection period or, if the liability has been paid, before the expiration of the time for claiming a refund or a credit;

- Prohibit persons who receive tax return information pursuant to a consent-based disclosure by the taxpayer under section 6103(c) from using the information for any purpose other than that for which the consent was granted and from disclosing such information to any other person without the taxpayer's permission;
- Require e-filing by all tax-exempt organizations that are required to file statements or returns in the Form 990 series or Form 8872 (Political Organization Report of Contributions and Expenditures) and require the IRS to make the information available to the public as soon as practicable and subject to existing disclosure rules in section 6104;
- Repeal the exception under section 170(f)(8)(D) to the contemporaneous written acknowledgment requirement for substantiating charitable contribution deductions (nullifying proposed regulations issued in October 2015 which, among other things, require the donee to obtain and report the donor's taxpayer identification number in order to comply with the exception);
- Prohibit the IRS from delegating to third-party contractors the authority to examine books and records, summon persons, or take sworn testimony related to a tax matter; and
- Require the IRS to notify exempt organizations before revoking their exempt status for failing to file information returns.

The legislation also would prohibit the IRS from rehiring former employees who were involuntarily separated for misconduct. (A similar provision is included in an IRS accountability measure approved in the House this week. See separate coverage in this issue.)

The JCT staff published a full description of the bill (JCX-30-16), along with summaries of the modifications made by Chairman Hatch prior to its mark-up (JCX-33-16).

[URL: http://www.finance.senate.gov/imo/media/doc/JCX-30-16%20%20Taxpayer%20Protection%20mark.pdf](http://www.finance.senate.gov/imo/media/doc/JCX-30-16%20%20Taxpayer%20Protection%20mark.pdf)

[URL: http://www.finance.senate.gov/imo/media/doc/JCX-33-16%20%20SFC%20TBOR%20Modification.pdf](http://www.finance.senate.gov/imo/media/doc/JCX-33-16%20%20SFC%20TBOR%20Modification.pdf)

Next step: Senate floor?

At press time, it was not clear when, or if, the two bills reported this week by the Finance Committee would be taken up by the full Senate, which just commenced consideration of appropriations legislation for fiscal year 2017 – an exercise which is expected to occupy much of the chamber's floor time through the summer.

Across the Capitol, House Ways and Means Committee Chairman Kevin Brady, R-Texas, indicated on April 20 that his panel could take up legislation targeting tax-related identity theft – among other measures – during the week of April 25.

One bill rumored to be under consideration for mark-up is the Stolen Identity Refund Fraud Prevention Act (H.R. 3832). That measure, introduced by Ways and Means Committee Republican James Renacci of Ohio – who was himself a victim of such fraud – includes certain provisions also found in the Finance Committee-reported legislation.

House clears IRS accountability bills

The House of Representatives this week approved four bills aimed at improving IRS oversight and accountability.

The four House-passed measures include provisions that would:

- Prohibit the IRS from rehiring any individual who was previously employed by the IRS but was removed for misconduct or whose employment was terminated for cause (H.R. 3724, approved by a vote of 345-78). A similar provision is included in a taxpayer protection measure marked up in the Senate Finance Committee on April 20. (See separate coverage in this issue.)
- Prohibit the IRS from hiring any individual until it publicly issues a written certification that it does not employ any individual who has a seriously delinquent tax debt (H.R. 1206, approved 254-170).
- Prohibit the Treasury Department from paying a bonus, award, or similar cash payment to any IRS employee until Treasury develops and submits to Congress a comprehensive customer service strategy that has been reviewed and approved by the Treasury Inspector General for Tax Administration (H.R. 4890, approved 260-158).
- Require the IRS to deposit the user fees it receives for services into the general fund of the Treasury and prohibit the IRS from spending those fees unless the spending is approved in an appropriations measure (H.R. 4885, approved 245-179).

The Obama administration threatened to veto H.R. 4885 in an April 18 statement of administration policy, arguing that requiring the IRS to deposit user fees into the general fund would “have detrimental effects on the IRS’s ability to provide quality service to taxpayers, administer the tax code, and enforce tax laws.”

URL: https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr4885r_20160418.pdf

In a separate statement also issued April 18, the administration expressed its opposition to H.R. 3724, H.R. 1206, and H.R. 4890 on the grounds that they would “impose unnecessary constraints on the Internal Revenue Service’s operations without improving the agency’s ability to administer the tax code and serve taxpayers”; however, statement did not include a specific veto threat.

URL:

https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr1206and4890and3724r_20160418.pdf

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