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Hatch to pursue section 48 energy extenders package

Senate Finance Committee Chairman Orrin Hatch, R-Utah, told reporters June 14 that he was working with Senate leadership on an agreement to provide long-term extensions of certain alternative energy credits under section 48 that are scheduled to expire at the end of this year.

Hatch's comments came shortly after Senate taxwriters concluded a hearing on energy tax policy issues.

'Remedy that mistake'

Last year's massive extenders agreement renewed section 48 credits for wind and solar energy for five years – through 2019 and 2021, respectively; however, credits under section 48 for fuel cell property, microturbine property, combined heat and power system property, geothermal property, and small wind property were not renewed beyond their scheduled expiration at the end of 2016. Finance Committee ranking Democrat Ron Wyden of Oregon has argued that the provisions were omitted from the final extenders bill as a result of a drafting error and has called for Congress to renew them for the long term so that all the section 48 credits can expire on the same schedule – a position he reiterated at the panel's energy hearing.

Hatch appeared to share that view in his remarks to reporters.

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"I suspect we are going to have to remedy that mistake. …We will have a vehicle before the end of the year if we have to add it to some other vehicle. We're working on it," he said.

Earlier this year, Senate lawmakers attempted to attach an extension of the section 48 provisions to a bill to reauthorize the Federal Aviation Administration (FAA), but those talks collapsed under their own weight after the legislation became a magnet for various other provisions. (For prior coverage, see *Tax News & Views*, Vol. 17, No. 15, Apr. 15, 2016.) The most recent extension of FAA-related programs and dedicated excise taxes on passengers, cargo, and fuel that provide the agency's revenue stream is scheduled to expire on July 15; but Hatch appeared doubtful that the Senate would make another attempt to use the FAA legislation as a vehicle for an energy package.
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160415_1.html

"We can do [energy extenders] probably at the end of the year, without fouling up [the FAA] bill. But we'll see – whatever the leadership wants to do," he said.

For his part, House Ways and Means Committee Chairman Kevin Brady, R-Texas, has expressed opposition to attaching unrelated tax language to an FAA extension. He has also commented that provisions that were not included in last year's extenders bill were left out intentionally and that he is not inclined to revisit tax extenders this year. (For prior coverage, see *Tax News & Views*, Vol. 17, No. 13, Mar. 25, 2016.)
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160325_1.html

House Republican taxwriter Tom Reed of New York, who has sponsored legislation (H.R. 5167) in that chamber to renew the expiring energy provisions, told *Politico* on June 16 he is working to include them in the upcoming FAA legislation but acknowledged that it would be "a difficult needle to thread."

Wyden's vision of a 'fresh approach'

Wyden told Finance Committee members and witnesses at the energy hearing that addressing the extenders issue now would "clear the decks" and allow lawmakers to "turn to finding a smarter, fresh approach to energy tax policy."

The approach that Wyden laid out at the hearing largely followed the contours of the American Energy Innovation Act (S. 2089), a bill he sponsored in 2015 along with Senate Minority Leader Harry Reid of Nevada and Finance Committee Democrats Maria Cantwell of Washington and Charles Schumer of New York that would eliminate all 44 current-law energy tax incentives – those benefiting fossil fuels as well as those benefiting renewables – and replace them with three sets of permanent, "technology-neutral" provisions designed to incentivize clean electricity, clean transportation fuels, and energy efficiency.
URL: https://www.congress.gov/bill/114th-congress/senate-bill/2089/text?q=%7B%22search%22%3A%5B%22cantwell%22%5D%7D#toc-idC1D95C1300CE452FAD022C08D29DCC64

"In my view, the key to a new approach on energy policy is going technology-neutral. The system on the books today distorts our energy markets, picks winners and losers, and holds innovators back. That ought to change, and that's why I've put forward a tech-neutral plan that will be radically simpler and more efficient," Wyden said.

According to Wyden, this approach also would cut in half the estimated $125 billion, 10-year cost of current-law energy incentives.

Wyden asked witnesses to weigh in on the importance of simplicity and certainty provided by permanent, streamlined incentives.

Susan Kennedy of Advanced Microgrid Solutions in San Francisco agreed that both were preferable; however, she warned against drafting legislation in a way that specifically defines which technologies would qualify for any available tax incentives. Language that is too prescriptive could prevent a superior but as-yet undiscovered technology from being eligible for those benefits, she cautioned.

Steve Miller of Bulk Handling Systems in Eugene, Ore., told Wyden that tax code uncertainty can stifle innovation by preventing alternative energy companies from securing the financing they need to carry out new projects.

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Hatch criticizes Obama policy

Finance Committee Chairman Hatch used the hearing primarily to reiterate his opposition to President Obama's energy policies – particularly, a proposal included in the administration's fiscal year 2017 budget that would place a $10.25 per barrel tax on domestically produced and imported oil.

"Whether it's an increased per-barrel tax on oil production or higher per-gallon taxes charged on gasoline at the pump, the Obama administration seems intent on raising the cost of producing or consuming energy from fossil fuels, even if it means increased hardships on middle-class and lower-income families," Hatch said.

Hatch also noted his opposition to carbon taxes, which he said would result in increased energy costs for consumers.

In response to a question from Hatch, Karen Alderman Harbert of the US Chamber of Commerce's Institute for 21st Century Energy in Washington said that the primary impact of a carbon tax would be higher gasoline prices. She contended that fossil fuels are the "backbone" of the economy and that foreign businesses that move to the US because of its relatively cheap energy prices would decamp if Congress adopted a carbon tax.

Benjamin Zycher of the American Enterprise Institute in Washington told Hatch that a carbon tax would create economic costs for the US without producing any environmental benefits.

'All of the above'

Hatch also advocated for what he called an "all of the above" approach to energy policy that would encourage effective alternative technologies but also protect the fossil fuel industry. He asked the witnesses for their thoughts on whether tax reform should engage in "social engineering" through resource allocation.

Zycher replied that tax policy should avoid "distortionary" effects and that as they contemplate reform lawmakers should consider keeping tax incentives out of the energy markets altogether.

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House votes to limit mandatory disclosure of donor names by exempt organizations

The House of Representatives voted 240-182 on June 14 to approve legislation limiting the government's ability to require tax-exempt organizations to disclose the names of certain donors on their annual returns.

The Preventing IRS Abuse and Protecting Free Speech Act (H.R. 5053), sponsored by Ways and Means Oversight Subcommittee Chairman Peter Roskam, R-Ill., would prohibit the Treasury Department from requiring a 501(c) organization to report on its Form 990 the name, address, or other identifying information of anyone contributing money or property, regardless of the amount. (Current law requires these organizations to disclose the identity of any donor who contributes $5,000 or more in money or property in a given year.)

Exceptions to this general prohibition would apply to:

- Information described in section 6033(a)(2) relating to a prohibited tax shelter transaction and
- Contributions of money or property exceeding $5,000 made by an officer or director of the organization (or an individual with powers and responsibilities similar to those of an officer or director) or by a "covered employee" (generally, any of the five highest-compensated employees of the organization for the taxable year).

H.R. 5053 would be effective for returns required to be filed for taxable years ending after the date of enactment. The Joint Committee on Taxation staff has estimated it would reduce federal receipts by $16 million over 10 years.
URL: https://www.jct.gov/publications.html?func=startdown&id=4910

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The proposal cleared the chamber largely along party lines. (Only one Republican broke ranks to oppose the bill and only one Democrat supported it.) Republicans argued during the floor debate ahead of the vote that the legislation would ease compliance burdens on nonprofit organizations and protect the privacy rights of their donors, while Democrats contended it could allow foreign governments to influence federal elections through undisclosed contributions to tax-exempt political action groups.

The measure now heads to the Senate, where leaders have not indicated when or whether it will receive floor consideration. There currently is no companion version of the bill in that chamber.

For its part, the White House on June 13 issued a statement of administration policy expressing opposition to the bill on the grounds that it would "constrain the IRS in enforcing tax laws and reduce the transparency of private foundations." The statement does not include an explicit veto threat, however.
URL: https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr5053r_20160613.pdf

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Ways and Means clears health care tax bills

The House Ways and Means Committee on June 15 passed seven health care-related bills, including proposals to broaden the rules for tax-preferred health savings accounts (HSAs) and narrow the scope of the Patient Protection and Affordable Care Act's (PPACA) employer mandate. This comes ahead of the anticipated release next week by the House Republican Conference of its proposed plan to replace the PPACA as part of its "Better Way" election-year policy agenda.

Among the bills advanced by the full committee were:

- H.R. 3590, sponsored by Rep. Martha McSally, R-Ariz., which would reduce the threshold for claiming the tax deduction for medical expenses to 7.5 percent of adjusted gross income (AGI) for all taxpayers, effective for taxable years beginning after December 31, 2015. The PPACA increased the threshold to 10 percent of AGI for taxpayers younger than 65 for tax years beginning in 2013; for taxpayers age 65 and older, the threshold is scheduled to increase to 10 percent of AGI beginning in 2017. The Joint Committee on Taxation (JCT) staff estimates the bill would reduce federal revenues by $32.7 billion over 10 years.
- H.R. 5445, sponsored by Rep. Erik Paulsen, R-Minn., which would increase the limits on HSA contributions, allow spouses to make catch-up contributions to the same HSA, and permit certain medical expenses incurred before an HSA is established to be treated as qualified medical expenses under the HSA distribution rules, effective for taxable years beginning after December 31, 2016 (estimated 10-year revenue loss: $20.5 billion).
- H.R. 210, sponsored by Rep. Mark Meadows, R-N.C., which would exclude student workers at colleges and universities from the full-time employee headcount for purposes of the PPACA's employer mandate, effective for months beginning after December 31, 2015 (estimated 10-year revenue loss: $3 million).
- H.R. 5447, sponsored by Reps. Charles Boustany, R-La., and Mike Thompson, D-Calif., which would provide a safe harbor under the group health plan rules for certain small employers who reimburse their employees for qualified medical expenses under a so-called "qualified small employer health reimbursement arrangement" (revenue neutral over 10 years).
- H.R. 5458, sponsored by Rep. Chris Stewart, R-Utah, which would expand the ability of TRICARE-eligible veterans to contribute to an HSA (estimated 10-year revenue loss: $97 million).

Also passed during the mark-up were two bills addressing Indian tribes. H.R. 5452, sponsored by Rep. John Moolenaar, R-Mich., would expand access to HSAs for those who receive service at Indian Health Service facilities (estimated 10-year revenue loss: $178 million); and H.R. 3080, sponsored by Rep. Kristi Noem, R-S.D., would exempt tribally owned businesses from the PPACA employer mandate (estimated 10-year revenue loss: $119 million).

It was unclear at press time when the Ways and Means-approved measures will be taken up on the House floor.

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