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Ryan, Brady ramp up calls for border adjustability, but Trump's position remains unclear

House Speaker Paul Ryan, R-Wis., and House Ways and Means Committee Chairman Kevin Brady, R-Texas, this week continued their full-throated advocacy of a proposed border-adjusted business tax as part of comprehensive tax reform, and the speaker set out an ambitious timeline for passage of a tax reform bill by August; but by week's end it was unclear whether their efforts at persuasion had won over President Trump.

Brady: 'Severe consequences' if border-adjusted tax fails

In a speech at the US Chamber of Commerce January 24, Brady repeated many of the arguments he has made in recent weeks for the inclusion of a border-adjusted tax – or destination-based cash flow tax (DBCFT) – to incentivize US-based production and jobs and make US companies more competitive globally. But he also added a new warning of "severe consequences" if opponents were successful in blocking the DBCFT, saying that corporate rates would have to be much higher than the 20 percent proposed by House Republicans or the 15 percent proposed by President Trump. (The tax is estimated to raise more than $1 trillion in revenue over 10 years – about a third of the total revenue raised

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in the business portion of the House GOP's tax reform blueprint – to help offset the cost of lower tax rates on business income.)

Brady added that successful legislation depends on CEOs of both large and small businesses speaking out.

"If we leave tax reform simply to Washington, I predict it will fall of its own weight," he said.

Ryan: Tax reform – with border-adjusted tax – part of 200-day agenda

The following day, during a retreat in Philadelphia for House and Senate Republicans, Ryan reportedly laid out a 200-day plan for top-priority initiatives, culminating with passage of tax reform legislation before Congress breaks for its annual August recess. (The agenda also calls for repealing and replacing the Patient Protection and Affordable Care Act by April.)

Ryan said President Trump had approved the timeline and pledged his support to help gain the necessary votes.

When asked by reporters if Trump had specifically endorsed the border-adjustment proposal, Ryan replied: "We're in a very good place on tax reform. …It can get complicated when you get into the details of tax reform, but once we go through how tax reform works and what it's going to take to get the kind of competitive tax system, the kind of competitive tax rates, I think most people agree that this is the right approach."

Trump's shifting positions

Trump has to date been publicly noncommittal on the DBCFT, first declaring last week that he didn't "love it" and thought it was "too complicated," but later saying he had not ruled it out. (For prior coverage, see *Tax News & Views*, Vol. 18, No. 3, Jan. 20, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170120_1.html

Speaking at the congressional Republican retreat on January 26, Trump seemed to link tax reform with raising revenue needed to build his promised wall along the US southern border with Mexico.

"We're working on a tax reform bill that will reduce our trade deficits, increase American exports and will generate revenue from Mexico that will pay for the wall if we decide to go that route," he said.

That comment led some analysts – and Ryan's own communications staff on Twitter – to initially conclude that the president was referring to the House border-adjustment tax proposal.

Speaking to reporters later that same day, White House Press Secretary Sean Spicer elaborated on the comment.

"If you tax that $50 billion [trade deficit with Mexico] at 20 percent of imports – which is, by the way, a practice that 160 other countries do – right now our country's policy is to tax exports and let imports flow freely in, which is ridiculous – by doing it that way, we can do $10 billion a year and easily pay for the wall just through that mechanism alone," he said.

However, Spicer subsequently told NBC News this tax was just one option for funding the border wall, leaving the question of the White House's position on a border-adjustable tax still up in the air.

"There are clearly a bunch of ways it can be done," Spicer said.

Trump's meeting with taxwriting leaders postponed

President Trump was scheduled to host a meeting at the White House the evening of January 26 with Brady and Senate Finance Committee Chairman Orrin Hatch, R-Utah, but that meeting was reportedly postponed in order to include Finance Committee ranking Democrat Ron Wyden of Oregon.

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Budget deficits to decline through 2018 before staging inexorable ascent, CBO says

An analysis of projected federal revenue and spending for 2017 through 2027 released by the nonpartisan Congressional Budget Office (CBO) January 24 offers a bleak picture of the nation's long-term fiscal outlook.
URL: https://www.cbo.gov/publication/52370

Deficit, public debt reach inflection point in 2018

Consistent with its recent analyses, CBO sees budget deficits remaining stable in the short term but beginning an inexorable ascent later in the decade. According to the report, deficits will hover around 2.5 percent of gross domestic product (GDP) over the next two years – roughly consistent with the 50-year historical average deficit of 2.8 percent of GDP. Over that same timeframe, the publicly held debt will also remain stable, at about 77.5 percent of GDP, according to the agency.

After 2018, however, CBO projects that budget deficits and the publicly held debt will begin to swell – reaching 5 percent of GDP and 88.9 percent of GDP, respectively, by 2027 – driven mainly by higher outlays attributable to increasing ranks of Baby Boomers becoming eligible for Social Security and Medicare, rising health care expenses, and growing debt service costs due to higher interest rates.

According to CBO, these outlay increases will outstrip a concurrent gradual rise in individual income tax revenues due mainly to so-called "bracket creep" – that is, the tendency of revenues to increase as wage gains outpace the inflation index to which the personal income tax brackets are tied – and increased distributions from tax-deferred retirement accounts by members of the Baby Boom generation.

Over the course of the 10-year budget window, federal spending is projected to rise from 20.7 percent of GDP this year to 23.4 percent of GDP by 2027 – above its 50-year historical average of 20.3 percent of GDP. Meanwhile, revenues are projected to remain relatively flat – at about 18 percent of GDP – over the next decade as declining corporate income tax receipts (the result of several offsetting factors, including the expectation that corporate taxable profits will decline as a share of the economy due to various tax-minimizing strategies) partially offset the projected increase in personal income taxes. Over the past 50 years, revenues have averaged 17.4 percent of GDP.

'Current law' versus 'current policy'

Pursuant to the Congressional Budget Act of 1974 – the law that established the CBO – the agency is required to make its budget estimates on the basis of "current law," or laws as they are currently in effect. Inherent in CBO's projections, therefore, is an assumption that all expired and expiring tax provisions will not be renewed – and revenues will be higher as a result.

By contrast, a "current policy" revenue baseline would assume that those lapsing tax provisions will instead be continued in perpetuity – a distinction that has relevance in the context of current tax reform discussions.

In particular, the tax reform blueprint unveiled by House Republicans last year in the run-up to the November elections states that the plan aims to achieve revenue neutrality (i.e., the reformed tax system will neither increase nor decrease revenues, on net) relative to a current policy baseline and after taking into account any positive revenue effects from additional economic growth spurred by the overall plan (so-called "dynamic" scoring). This approach – which is unlikely to be viewed favorably by congressional Democrats – represents a departure from the comprehensive tax reform plan released in 2014 by former Ways and Means Committee Chairman Dave Camp, R-Mich., which achieved revenue neutrality over 10 years relative to a current law baseline and under conventional scoring methodologies.
URL: https://abetterway.speaker.gov/_assets/pdf/ABetterWay-Tax-PolicyPaper.pdf

According to supplementary information accompanying its report, the CBO notes that the revenue baseline would be reduced by roughly $350 billion over the next decade under an assumption that bonus depreciation is extended at a 30 percent rate beyond its scheduled expiration after 2019 and all other lapsing tax cuts are made permanent.

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This figure is largely consistent with one mentioned in the House GOP blueprint.

"Because an assumption that Congress, in fact, will continue to extend current policy more closely resembles historical experience, House Republicans measure revenue neutrality by reference to a 'current policy' baseline – i.e., achieving a level of Federal revenues that is approximately $400 billion less over the 10-year window than the current law baseline," the blueprint states.

Next step: House and Senate budget plans

The revenue and spending projections included in the report, known to policymakers as the "baseline," will serve as the benchmark against which the CBO and the Joint Committee on Taxation will measure the budget impact of congressional tax and spending proposals during the first several months of 2017. (The baseline is typically updated later in the year.)

The baseline also will be the yardstick against which budgetwriters in the House and Senate will draft their fiscal year 2018 budget resolutions – a process expected to commence this spring.

House and Senate Republicans recently wrapped up work on a fiscal year 2017 budget resolution – a narrow measure that authorizes a reconciliation bill targeted at dismantling the Patient Protection and Affordable Care Act. (For prior coverage, see *Tax News & Views*, Vol. 18, No. 2, Jan. 13, 2017.) Provided that the follow-on bills comply with strict parliamentary rules governing the reconciliation process, they can be passed by both chambers with a simple majority vote – a potentially powerful tool for Republicans who control 52 seats in the Senate. (A three-fifths majority – 60 votes – is typically required to advance legislation in that chamber under regular order.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170113_1.html

Congressional Republicans have openly discussed including additional budget reconciliation instructions in their fiscal 2018 budget plan, possibly for the purpose of moving tax reform legislation in a way that can bypass a Democratic filibuster in the Senate.

Before that is possible, however, House and Senate Republicans would need to agree on a fiscal 2018 budget blueprint that includes the instructions – a process that could be complicated for several reasons.

For example, budget plans drafted by Republicans in recent years have generally sought to put the federal budget on a path to balance within the 10-year budget window, in part by reforming entitlement programs (e.g., Medicaid, Medicare, and Social Security) and accepting the statutory cuts to domestic and defense spending required by the so-called "sequester." However, during his election campaign, then-candidate Trump generally advocated an approach that would significantly increase defense spending while holding harmless the major entitlement programs. Trump has also called for a large-scale infrastructure package – a policy that did not appear in past Republican budget plans.

It currently remains unclear whether the White House will submit its own budget to Congress. Under law, the president's budget is due by the first Monday in February; however, that deadline has rarely been met in recent years – particularly when a new administration has just taken office – and is not expected to be met by the new Trump administration, should it produce a budget plan.

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Cabinet confirmation update

As President Donald Trump continues to fully staff his White House, *Tax News & Views* provides highlights from the confirmation proceedings for cabinet appointees who, if confirmed, will play a role in shaping US tax policy.

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Treasury: Mnuchin reiterates call for increased IRS funding to address tax gap

Steven Mnuchin, President Trump's nominee for Treasury Secretary, this week doubled down on remarks he made at his recent confirmation hearing before the Senate Finance Committee that suggested he would support increased funding for the IRS to promote more efficient revenue collection.

When Mnuchin appeared before the panel on January 19, he expressed concern about recent declines in staffing levels at the IRS and stated that addressing the headcount issue would be an important part of closing the tax gap – that is, the difference between the amount of taxes owed to the federal government and the amount actually collected. He also indicated that additional funding to modernize the agency's technology would likewise make the Service more efficient in collecting revenue, as would improvements in customer service. His comments set him apart from congressional Republicans, who in recent years have cut the IRS budget, and from the House GOP's tax reform blueprint, which calls for further shrinking the agency. (For prior coverage, see *Tax News & Views*, Vol. 18, No. 3, Jan. 20, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170120_1.html

In his responses to written questions submitted by Senate taxwriters after his confirmation hearing, Mnuchin stated that he would "commit to work with" Trump to exempt the IRS from a federal hiring freeze "[t]o the extent that additional resources are needed to increase revenues and improve taxpayer services." (President Trump signed an executive order on January 23 implementing an across-the-board hiring freeze at federal agencies.)

Mnuchin also stated that he was "concerned" about current funding levels for the Service's technology and cybersecurity systems and promised that he "would work with the IRS commissioner to ensure that we have the necessary resources."

Health and Human Services: Price reveals little about PPACA replacement plans

Rep. Tom Price of Georgia, who has been nominated to head up the Department of Health and Human Services – and would be responsible for implementing significant portions of legislation to repeal and replace the Patient Protection and Affordable Care Act (PPACA) that is expected to move through Congress in the coming months – provided few clues of what a post-PPACA health care system would look like when he appeared before Senate taxwriters at his January 24 confirmation hearing.

Price confirmed to Finance Committee member Sherrod Brown, D-Ohio, that he has had conversations about health care reform with President Trump, but he did not comment directly on Trump's recent assertion that his administration's PPACA replacement plan is nearly complete.

Although Price made few specific comments on what tax provisions should be included in a PPACA replacement plan, he agreed with Finance Committee member Dean Heller, R-Nev., that the so-called "Cadillac" tax on certain high-cost employer-sponsored health plans should be repealed. Heller argued that although the tax was originally targeted at wealthier taxpayers, it was also likely to ensnare a growing number of middle-class individuals. Price, for his part, commented that "there may be a better way to make it so that individuals gaining their coverage through their employer are able to gain access to the kind of coverage they desire." He also told Heller that he would "work to make certain that those who gain coverage through their employer will have access to the highest quality health care and coverage possible in a way that makes the most sense for individuals from a financial standpoint."

Price expressed support for the current employer-provided health care system, telling Sen. Tim Scott, R-S.C., that it "has been a remarkable success in allowing individuals to gain coverage that they otherwise might not gain," and that "preserving [it] is imperative." But he also indicated that he is willing to consider expanding the system to make it easier for employers to offer programs like health reimbursement arrangements that provide resources for employees to purchase the specific coverage that they want. Such an option should be available on a voluntary basis if it makes economic sense for employers and their employees, and should receive the same tax treatment as traditional employer-provided health coverage plans, Price said.

Price offered no direct response to assertions by Sen. Claire McCaskill, R-Mo., that repealing the individual taxes enacted in the PPACA – such as the additional 0.9 percent Medicare Hospital Insurance tax and the 3.8 percent net investment income tax on joint filers with adjusted gross income (AGI) over $250,000 and individuals with AGI over $200,000 – would amount to a significant tax reduction for wealthier taxpayers but would provide no tax relief for the

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middle class. (He did argue, however, that the PPACA has in many cases increased the cost of health care coverage for middle-class individuals and that repealing it would ease those burdens.)

Finance Committee Chairman Orrin Hatch, R-Utah, disputed McCaskill's premise, citing estimates from the Joint Committee on Taxation staff from May 2010 that he said "identified significant widespread tax increases" under the PPACA – such as changes to the deduction for unreimbursed medical expenses – that would affect taxpayers making less than $200,000.

Office of Management and Budget: Mulvaney defends dynamic scoring

Rep. Mick Mulvaney, R-S.C., President Trump's pick to lead the White House Office of Management and Budget (OMB), defended the use of dynamic scoring at his January 24 confirmation hearing before the Senate Budget Committee. As head of the OMB, Mulvaney would, among other things, play a key role in developing the Trump administration's annual budget proposals.

Dynamic scoring takes into account certain macroeconomic feedback effects of tax and spending legislation on the economy and in turn on federal revenue levels. The use of dynamic scoring is expected to be an issue in the tax reform debate this year as House Republicans have stated that the tax reform legislation they expect to move through Congress in the coming months will be revenue neutral when scored on a dynamic basis.

At the hearing, Mulvaney, responding to questions from Sen. Budget Committee member Ron Johnson, R-Wis., spoke of what he saw as "an implicit bias" for using a traditional "static" model for revenue estimates; but he argued that static scoring can yield "misleading" results.

Although Mulvaney acknowledged that dynamic models "aren't perfect" and that it is "very difficult to model out an economy" as large as that of the US, he told Johnson that "to completely ignore macroeconomic feedback is probably short-sighted." He also indicated that he would consider "bringing reforms to that area at the OMB."

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On first day, Trump issues executive order on PPACA

Just hours after being sworn in to office, President Donald Trump signed an executive order officially setting out the policy of his administration to seek repeal of the Patient Protection and Affordable Care Act (PPACA). For however long the law remains in effect, the executive order asserts it is "imperative for the executive branch to ensure that the law is being efficiently implemented, take all actions consistent with law to minimize the unwarranted the economic and regulatory burdens of [the PPACA], and prepare to afford the states more flexibility and control to create a more free and open healthcare market." But what does it really mean?

The best starting point to understanding the order is the language of the executive order itself, key parts of which are reproduced below:

> Sec. 2. To the maximum extent permitted by law, the Secretary of Health and Human Services (Secretary) and the heads of all other executive departments and agencies (agencies) with authorities and responsibilities under the Act shall exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the Act that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications.
>
> Sec. 3. To the maximum extent permitted by law, the Secretary and the heads of all other executive departments and agencies with authorities and responsibilities under the Act, shall exercise all authority and discretion available to them to provide greater flexibility to States and cooperate with them in implementing healthcare programs.

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> Sec. 4. To the maximum extent permitted by law, the head of each department or agency with responsibilities relating to healthcare or health insurance shall encourage the development of a free and open market in interstate commerce for the offering of healthcare services and health insurance, with the goal of achieving and preserving maximum options for patients and consumers.
>
> Sec. 5. To the extent that carrying out the directives in this order would require revision of regulations issued through notice-and-comment rulemaking, the heads of agencies shall comply with the Administrative Procedure Act and other applicable statutes in considering or promulgating such regulatory revisions.

Clearly, the executive order challenges incoming Secretaries of Health and Human Services (Tom Price), Labor (Andrew F. Puzder), and Treasury (Steven Mnuchin) to look for ways to ease the "burdens" of the PPACA on key stakeholders, presumably including employers (although not mentioned by name). But so far none of these nominees have been confirmed by the Senate. Until they are, they cannot take any official action on the executive order.

Once confirmed, how quickly they will be able to take action on the executive order will depend on what steps they decide to take. For example, some reports indicate priorities will include loosening up the rules relating to "essential health benefits" and individual mandate hardship waivers. Changing the rules for "essential health benefits" almost certainly would require issuing new proposed regulations, followed by a review and comment period, and then final regulations. Typically that process takes a year or more even for noncontroversial items.

By comparison, it may not require formal rulemaking to more liberally interpret the standards for granting hardship exemptions to the individual mandate. But there are practical considerations as well. An effective individual mandate is considered by many to be essential to the continued functioning of the health insurance exchanges under current law.

To date, no specific mention has been made of how the executive order is expected to impact the provisions most directly affecting employers – e.g., the Employer Shared Responsibility Rules and related employer reporting requirements. So until something official is announced by the Treasury Department, employers (and all other stakeholders) should continue to comply with existing rules. That includes preparing to furnish a 2016 1095-C to employees by March 2, 2017, and file with the IRS by March 31, 2017.

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