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PPACA repeal-and-replace legislation clears House, but Senate revisions likely

The House of Representatives on May 4 voted 217-213 to approve a modified version of budget reconciliation legislation that would repeal major pieces of the Patient Protection and Affordable Care Act of 2010 (PPACA) and replace it with a system aimed at facilitating the purchase of health insurance on the individual market through refundable tax credits and liberalized rules for tax-favored health savings accounts.

A difficult needle to thread

Passage of the American Health Care Act of 2017 (AHCA, H.R. 1628) concludes – for now, at least – what has proved to be a tortured process for moving a Republican-drafted PPACA repeal-and-replacement bill through the Republican-controlled House. Since the initial version of the AHCA was unveiled in early March, Democrats, as expected, have been united in their opposition to the measure; but GOP leaders have had to grapple with concerns of lawmakers at both ends of the Republican ideological spectrum in an effort to forge a majority. Conservative Republicans – namely members of the Freedom Caucus – contended that the AHCA left in place too many elements of the law they want to dismantle; more moderate lawmakers, meanwhile, voiced concerns about the impact of the new bill on older and less affluent individuals.

As the bill headed toward a planned floor vote on March 24, House GOP leaders offered two different managers' amendments that accelerated repeal of many of the PPACA's tax provisions, carved out revenue to modify the health care tax credit, and made numerous additional nontax policy changes (most notably, allowing states to opt out of the PPACA's "essential benefits" provisions), all in an effort to address the mounting reservations from the Republican rank-and-file. But those modifications ultimately proved insufficient to allow House Republican leaders to cobble together a majority, and Speaker Paul Ryan, R-Wis., decided to cancel the floor vote rather than risk an outright defeat. (For prior coverage, see *Tax News & Views*, Vol. 18, No. 11, Mar. 24, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170324_1.html

In the intervening six weeks, Ryan and the Trump administration negotiated additional – nontax – changes to the measure in an effort to win over skeptics and fence-sitters. Those efforts allowed the leadership to eke out a narrow victory. When the floor vote came, the bill was approved solely on the strength of Republican votes but it failed to garner unanimous GOP support. Indeed, 20 conservative and moderate Republicans joined 193 Democrats in the "no" column. (Republicans could afford only 22 defections to maintain the majority they needed for the legislation to pass.)

But the needle-threading process is not over yet. The bill now heads to the Senate, where Republican leaders are expected to propose major revisions to satisfy the sometimes conflicting policy demands of conservative and moderate GOP lawmakers in that chamber. And that process potentially sets the stage for a new round of negotiations once the Senate-approved measure is returned to the House for consideration.

Mandates gone

As approved in the House, the AHCA would effectively repeal the PPACA's individual and employer mandates by reducing the penalty for noncompliance to zero for months after December 31, 2015. However, a new rule would permit insurance companies to impose a surcharge on policy premiums of up to 30 percent in the case of individuals who fail to maintain continuous coverage over a specified timeframe.

Most tax provisions repealed retroactively

The measure continues to call for eliminating most of the business and individual taxes enacted under the PPACA and adopts the accelerated repeal schedule included in the manager's amendment released on March 20.

Business provisions: The AHCA would repeal most of the business taxes enacted under the Affordable Care Act, generally effective for months beginning after December 31, 2016. These include the:

- Annual fee on US health insurance providers allocated based on net premiums for US health risks;
- Annual fee on manufacturers and importers of branded drugs;
- 2.3 percent excise tax on manufacturers and importers of certain medical devices; and
- The $500,000 deduction limitation on taxable remuneration to officers, employees, directors, and service providers of covered health insurance providers.

The measure also would reinstate – effective beginning in 2017 – the deduction for expenses allocable to the Medicare Part D subsidy, which was eliminated under the PPACA.

Under the bill as originally introduced, all of these provisions would have become effective beginning in 2018.

Individual provisions: On the individual side, the AHCA would eliminate:

- The 3.8 percent Medicare contribution on certain unearned income of individuals with adjusted gross income (AGI) over $250,000 for joint filers ($200,000 for single filers);
- The so-called "medicine cabinet tax," which provides that the purchase of over-the-counter drugs is not a qualified expense for purposes of rules governing health savings accounts (HSAs) and flexible spending accounts;
- The increased (20 percent) penalty for nonqualified distributions from an HSA or an Archer medical savings account; and
- The $2,500 limitation (indexed) on annual salary-reduction contributions to health flexible spending accounts in cafeteria plans.

As with the business taxes, the House-approved bill would accelerate the repeal of these provisions by a full year to months beginning after December 31, 2016. Repeal of the 10 percent excise tax on indoor tanning services, however, would be accelerated by only six months – to June 30, 2017. (According to a summary of the manager's amendment, this timing change "reflect[s] the quarterly nature of this collected tax.")

Floor for medical expense deduction: The House-approved bill also would repeal an Affordable Care Act provision that generally increased the floor for claiming the deduction for unreimbursed medical expenses to 10 percent of adjusted gross income, effective for months beginning after December 31, 2016. Instead of returning the floor to its prior-law level of 7.5 percent of AGI, however, the approved bill incorporates a provision from the manager's amendment that would reduce the floor for claiming the deduction to 5.8 percent of AGI.

Repeal of additional Medicare HI tax *delayed*: The additional 0.9 percent Medicare hospital insurance tax on wages over $250,000 for joint filers ($200,000 for single filers) also would be repealed; however, under a separate manager's amendment, that provision would be effective for taxable years beginning after December 31, 2022. (The bill as originally introduced called for repealing the levy beginning in 2018.)

Cadillac tax, economic substance doctrine: Still in there…

As approved by the House, the AHCA would retain the so-called "Cadillac" tax – a 40 percent excise tax levied at the insurance company level on employer-provided plans that exceed a certain premium threshold. Under current law, implementation of the tax is delayed until 2020. The amended bill would further delay implementation until 2026, one year longer than originally planned.

One Affordable Care Act revenue raiser left untouched in the AHCA is the "economic substance" doctrine, codified in section 7701(o), which generally requires taxpayers to show that a transaction changed their economic position in a meaningful way apart from the federal income tax effects and that they had a substantial nontax business purpose for entering into a transaction. It also imposes a strict liability penalty on understatements attributable to transactions determined to lack economic substance. (The penalty varies depending on whether or not the transaction was disclosed.)

Tax credit changes punted to Senate

On the incentive side, the House-approved bill would create a system of refundable, age-adjusted credits to replace the Affordable Care Act's premium assistance credits for low-income households; however, Republican leaders expect the provision to be modified in the Senate.

As the provision is currently structured, individuals not insured by an employer or government program (such as Medicare or Medicaid) would, beginning in 2020, receive a monthly credit at an annualized rate ranging from $2,000 (for eligible individuals under 30), increasing by $500 for every 10 years of age, up to $4,000 (for individuals over 60). The maximum family credit would be $14,000 per year, calculated taking into account the five oldest credit-eligible family members. The credit amount would still begin to phase out for individuals earning over $75,000 and couples earning over $150,000.

But the provision has been a target of ongoing criticism since it was unveiled in the Ways and Means Committee mark-up of the AHCA's tax title on March 9, with conservative Republicans characterizing it as a new tax entitlement and moderates objecting that it would provide insufficient financial assistance to older and less affluent individuals who would be relying on the credit to purchase health insurance.

House Republican leaders ultimately decided that the credit needs to be restructured; but they took no action to modify it as part of the manager's amendments they released in March and instead indicated that they would rely on the Senate to make the necessary changes. In a March 20 news release, House Ways and Means Chairman Kevin Brady, R-Texas, indicated that the decision to lower the floor for claiming the medical expense deduction in the manager's amendment to 5.8 percent of AGI rather than restore the prior-law floor of 7.5 percent was a strategic move to carve out revenue that would give the Senate "flexibility to potentially enhance the tax credit for those ages 50 to 64 who may need additional assistance." (The Congressional Budget Office estimated on March 23 that the change to the medical expense deduction would decrease federal receipts by roughly $90 billion over 10 years.)

Exactly what changes the Senate might make to the credit are not currently known. One proposal that has been floated by Finance Committee Republican John Thune of South Dakota would means-test the credit as a way to, in his words, avoid “creating a new middle-class entitlement” and make the benefit “more progressive.”

HSA enhancements remain in place

Then House-approved bill retains several provisions that would expand access to and increase the flexibility of HSAs – tax-preferred savings accounts which, when used in conjunction with a high-deductible health insurance plan, allow individuals to pay for qualifying out-of-pocket health care expenses “using tax-free dollars.” These include:

- Increasing the maximum HSA contribution limit to the combined amount of the plan’s deductible and out-of-pocket contribution requirement;
- Allowing both spouses to make catch-up contributions to the same HSA; and
- Providing an administrative fix to allow certain expenses incurred after a taxpayer purchases an eligible high-deductible insurance plan, but before the taxpayer establishes an HSA, to be treated as eligible expenses under the HSA.

These provisions generally would take effect after December 31, 2017.

Medicaid provisions

While the bill as approved would roll back Medicaid expansion beginning in 2020, it includes some significant changes that were added (as part of the March manager’s amendments) to entice GOP members from both ends of the spectrum.

For the more conservative members, an option that would allow states to impose work requirements (with certain limitations) on Medicaid recipients helped to win over some members who saw the program as a new entitlement. The bill as amended also contains a provision allowing states to opt for block grants rather than per capita allotments.

To attract centrist members who were concerned about increased costs of care pricing their more vulnerable constituents out of Medicaid benefits, the manager’s amendment would, among other things, increase the inflation factor for calculating reimbursement amounts for elderly and disabled individuals by 1 percentage point.

No CBO score yet

The House vote came before the Congressional Budget Office (CBO) had a chance to produce an updated revenue score that reflects the revisions to the legislation that were negotiated in recent weeks – for example, an amendment allowing states to opt out of certain PPACA rules regarding the cost of coverage for individuals with pre-existing conditions and a separate amendment allocating $8 billion to help fund state-sponsored high-risk pools.

The CBO score could prove critical in determining whether the plan meets the budgetary and procedural requirements that will permit it to move through the Senate under reconciliation protections, which would allow for passage with a simple majority vote, rather than the 60 votes normally required to advance legislation in that chamber under regular order. (Republicans control only 52 seats in the Senate and are relying on the reconciliation process to win approval of the measure.)

The forthcoming analysis from the CBO will help determine, among other things, whether the legislation complies with the so-called “Byrd Rules,” which deny reconciliation protections to legislation that increases the deficit outside of the 10-year budget window and block provisions that are deemed to have no effect on the federal budget, or whose effect is “merely incidental” to the underlying policy.

The CBO score is likely also to include projections of how many individuals may gain or lose health coverage under the plan – statistics that could significantly impact the politics of moving the bill through Congress. (Moderate Republicans in both chambers have raised the issue of coverage levels under the AHCA as a potential source of concern.)

A Senate rewrite ahead

Although GOP leaders managed to pull together a majority to pass the AHCA in the House, the bill is unlikely to survive in its current form in the Senate, where a similar conservative-versus-moderate dynamic is playing out among Republicans and the margin for error is only two votes. (Senate Democrats, like their House counterparts, are expected to oppose the legislation.)

In late March, shortly before House leaders canceled their planned floor vote, a whip list published by *The Hill* showed six Republican senators – conservatives Tom Cotton of Arkansas, Ted Cruz of Texas, Mike Lee of Utah, and Rand Paul of Kentucky, and moderates Susan Collins of Maine and Dean Heller of Nevada – squarely against the House bill, and another 15 expressing reservations about the measure but still officially among the undecideds. If opposition to the House bill remains at those levels, Majority Leader Mitch McConnell, R-Ky., and others in the Senate GOP leadership will find themselves in the difficult position of having to rewrite the measure in a way that satisfies the different Republican factions in their chamber and still is able to attract a Republican majority when the revised bill is sent back to the House for reconsideration.

Also to be seen is whether the Senate parliamentarian exposes any provisions of the AHCA to a point of order on the grounds that the provision has no impact or only an incidental impact on the budget.

McConnell told reporters on May 3 that Senate leaders “don’t want to give up on” the effort to repeal and replace the Affordable Care Act, but he acknowledged that “it’ll be a real big challenge on the Senate side.”

Republican Sen. Lamar Alexander of Tennessee, who chairs the Health, Education, Labor, and Pensions Committee (one of the Senate panels with jurisdiction over health care legislation) told reporters May 4 to expect substantive revisions from lawmakers on his side of the Capitol.

“We’re writing a Senate bill and not passing the House bill. We’ll take whatever good ideas we find there that meet our goals,” he said.

Alexander added that there currently is no rigid timeline for producing a Senate version of the AHCA.

“There will be no artificial deadlines in the Senate. We’ll move with a sense of urgency but we won’t stop until we think we have it right,” he said.

In a press conference after the House vote, however, President Trump declared that the AHCA “has brought the Republican Party together” and was optimistic that it would clear the Senate.

“We’re going to get this passed through the Senate, I feel so confident,” Trump said.

— Michael DeHoff
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Mnuchin offers few new details on White House ‘principles’

Treasury Secretary Steven Mnuchin took to the airwaves this week to tout the tax reform principles recently released by the Trump administration but offered few new specifics on where the White House stands on certain key issues or how those tax reform principles would translate into actual legislation.

President Trump’s principles for overhauling the tax code, which were released as a one-page fact sheet on April 26, include, among other things, lowering the top income tax rate for corporations and passthrough entities to 15 percent, as well as shaving individual rates, compressing the rate brackets, and significantly increasing the standard deduction. (For prior coverage, see *Tax News & Views*, Vol. 18, No. 14, April 26, 2017.) Administration officials have said that the principles represent the president’s “opening bid” on tax reform and that the fact sheet was deliberately kept brief to give the White House an opportunity to develop specific policy details in conjunction with congressional Republicans.
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170426_1suppA.pdf

URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170426_1.html

Border adjustability

In an interview on Fox Business on May 1, Mnuchin did little to clarify the administration's position on the proposed destination-based cash flow tax included in the House Republican tax reform blueprint – a proposal that has sparked strong reactions among lawmakers and within the business community and that is not addressed in the president's tax reform principles.

The House Republican proposal, which is estimated to raise over $1 trillion to help offset the cost of a proposed corporate rate cut, provides for "border adjustments" through a not-yet-specified mechanism that would serve to eliminate US tax on products, services, and intangibles exported abroad (regardless of their production location) and impose a 20 percent US tax on products, services, and intangibles imported into the US (also regardless of production location.)

Echoing previous remarks, Mnuchin said only that the blueprint provision "in its current form…doesn't work. We have a lot of concerns about it, although there are aspects we like, and we'll continue to have those discussions if [Ways and Means Chairman Kevin Brady] wants to make changes to it." (For a discussion of some of the changes that House taxwriters are considering, see *Tax News & Views*, Vol. 18, No. 15, April 29, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170428_1.html

But Mnuchin also stated there are "lots of different ways we can look at making up that revenue" if the border-adjustment tax does not make the final bill. He noted, for example, that President Trump supports "free and fair trade" and would be open to the concept of an as-yet undefined "reciprocal tax" under which tariffs in the US would mirror those levied on American goods in the country of origin – presumably on a country-by-country basis. (President Trump has similarly expressed an interest in pursuing a reciprocal tax in recent interviews.)

State and local tax deductions

One issue that Mnuchin did discuss in some detail was the administration's willingness to repeal the deduction for state and local taxes as part of an effort to simplify the tax code. Mnuchin argued that the deduction is skewed to wealthier individuals and that a greater number of taxpayers would benefit from the administration's proposal to double the standard deduction.

"We don't think the federal government should be in the business of subsidizing the states. The states should be able to decide what they want to charge in income taxes and again part of tax simplification is getting rid of lots of deductions," Mnuchin said.

Passthrough tax rates

The administration has taken some criticism for its proposal to provide a 15 percent rate for passthrough entities, which are currently taxed on the individual side of the code and are subject to a top rate of 39.6 percent. (The specific concern is that such a proposal would encourage wealthy individuals to "game" the tax code by recharacterizing wage income as more lightly taxed business income.)

But Mnuchin repeated the administration's assertion that the potential for gaming can be mitigated, saying "we will have rules to make sure that people who should be paying 35 percent personal rates" – the administration's proposed top rate for individuals – "aren't able to set up LLCs and other entities to get around the tax code."

No infrastructure component

Mnuchin reiterated that the administration does not intend to use any one-time revenue from business tax reform to finance new infrastructure spending. (Reports had circulated ahead of the release that President Trump might include such a proposal as a way to win support from congressional Democrats, who so far have been united in their opposition to Republican tax reform efforts.)

In a related development, President Trump suggested in a May 1 interview with Bloomberg News that he would be open to an increase in the federal gasoline tax to fund an eventual infrastructure bill. But in a White House press briefing the same day, Press Secretary Sean Spicer walked back that idea, saying that the president "was just relaying what another industry group had shared with him about how to pay for the roads and bridges that need to be repaired and the impact that deteriorating roads and bridges are having on their ability to operate and to deliver goods and services…."

A focus on growth

Mnuchin repeatedly stressed economic growth as the primary goal of tax reform and explained that growth would be achieved through a combination of rate cuts, regulatory relief for business and individuals, and new trade policies that make US businesses more competitive. He also remained optimistic about his belief that tax reform would "pay for itself with both growth and reduction of deductions."

"We believe we can get to 3 percent sustained economic growth. That's going to take us some time but that's our objective," he said.

Trump, Priebus address carried interest

Also this week, President Trump and White House Chief of Staff Reince Priebus confirmed in separate interviews that the administration's tax reform plan will propose to treat carried interest income as ordinary rather than capital gain. (The issue is not addressed in the administration's tax reform principles.)

"It's gone," Trump told CBS's *Face the Nation* on April 30. "Even [Commerce Secretary] Wilbur [Ross], is probably not too happy about losing carried interest, being one of the great tycoons on Wall Street. But look, carried interest was great for me too. But carried interest was unfair, and it's gone."

Priebus echoed those remarks the same day in comments on ABC's *This Week*.

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House GOP taxwriters seek consensus with White House – and each other

Following the Trump administration's recent release of its principles for overhauling the tax code, Republican members of the House Ways and Means Committee huddled in Washington at a retreat April 30 and May 1 in an effort reach consensus among themselves and with the White House for what they all hope will be a push for historic tax reform before the end of the year.

The retreat, which had long been on the committee's schedule, was intended to rally all the committee's Republicans around a single plan; but the discussion necessarily took a new direction as the White House weighed in with its tax reform principles on April 26. The retreat included dinner with National Economic Director Gary Cohn, who, along with Treasury Secretary Steven Mnuchin, has been the public face of the administration's tax team. (See separate coverage of Mnuchin's recent comments on the administration's tax preform principles in this issue.)

Assorted pressure points

Ways and Means Committee Chairman Kevin Brady, R-Texas, and House Speaker Paul Ryan, R-Wis., have continued to push for consensus around the blueprint they introduced last June but have received pushback from some of their colleagues – and from some Senate Republicans – on several proposals.

Border-adjustment tax: Most notably, a number of lawmakers and a vocal segment of the business community have opposed the proposed border-adjustment tax – which would exempt from the corporate tax a company's export sales while taxing its US imports at the proposed corporate rate of 20 percent.

The White House has not stated definitively whether or not it supports the blueprint proposal. In public remarks, administration officials have suggested they would be open to the proposal with modifications, but have also expressed support for the notion of an as-yet undefined "reciprocal" tax.

Territorial taxation: Both the blueprint and the administration's tax reform principles would move the US from its current worldwide system of international taxation to a territorial regime under which offshore profits of domestic multinationals would be taxed where they are earned in the world and not a second time when repatriated to the US (the system in place in most other OECD countries). The administration's outline, however, focuses more purely on large tax cuts than on significant changes to the US regime. The blueprint, on the other hand, attempts to shift the US more towards a consumption-based system (through the border-adjustment tax, which operates as a levy on cash flows) while also lowering rates.

Deduction for net business interest: Certain lawmakers have raised concerns about the blueprint's proposals to eliminate the deduction for net business interest. Senate Finance Committee Chairman Orrin Hatch, R-Utah, for example, said in a May 4 interview on Bloomberg Television that it would be "pretty tough to do away with interest deductibility – people are so used to it." (The issue is not addressed in the administration's tax reform principles.)

Revenue neutrality: Fault lines have also emerged within the GOP on the issue of revenue neutrality. The House Republican blueprint calls for tax reform that is revenue neutral under "dynamic scoring" rules, which take into account certain macroeconomic feedback effects of tax and spending legislation, an approach that generally would require inclusion of significant revenue offsets. But the Trump administration has suggested in the past that it is less concerned with the potential short-term impact on federal deficits and that tax reform will pay for itself in the long run by unleashing sustained economic growth – arguments that Vice President Mike Pence reiterated in an April 30 interview on NBC's *Meet the Press*.

Senate Finance Committee Chairman Hatch, for his part, told Bloomberg Television that he is "not so sure that it's absolutely critical that [tax reform] be revenue neutral" and that he "would be more concerned about how we can get the economy to move forward and grow than whether or not we meet the formal test of budget neutrality."

No definitive conclusions yet

While most Ways and Means Republicans were generally tight-lipped about what transpired at the Ways and Means retreat, it is clear that no definitive decisions were reached on the more controversial elements of the House blueprint or on how the differences between House Republicans and the administration will be resolved. Brady and Ryan have acknowledged in recent weeks that the border-adjustment tax will have to be modified in order to be viable, but they remain adamant that the general contours of the proposal should be included in tax reform legislation. Potential changes that have been mentioned are a lengthy transition period, an exemption for certain imported products not readily available in the US, and a rate other than the proposed 20 percent.

At the beginning of the year, the Ways and Means Committee intended to move its own bill through the House, while letting the Senate take its own path. It now appears as though the taxwriters hope to work out a single Republican plan with support from the majority of their members before taking any votes.

"We made very solid progress on a wide range of ideas and solutions that we will be bringing to the table as we begin discussions with the White House and the Senate over the coming weeks," said Brady in a press release following the retreat.

Freedom Caucus wants in

In other developments, key members of the House Freedom Caucus announced on May 4 that the group is working on its own tax reform proposal, using President Trump's principles as their starting point. Hoping to build on what he said were lessons learned from the bumpy House process on repealing and replacing the Patient Protection and Affordable Care Act, Rep. Mark Meadows, R-N.C. – the leader of the conservative group that numbers about three dozen – said that the caucus wants to get involved early in the process (although it's worth noting that the House GOP leadership published its blueprint nearly a year ago).

Meadows said the group is working to develop legislative language based on the Trump administration's tax principles. In contrast with the view of House leadership and most Ways and Means members, he also said he believes the legislation should not include revenue offsets, since the economic growth that will result from tax cuts, coupled with reduced federal spending, will help cover the cost of lower rates. This is similar to the argument made by Treasury Secretary Mnuchin in recent weeks.

"I think we're going to try to have a lot of different ideas and hopefully we can have our input with Ways and Means," Meadows said.

Rep. Jim Jordan, R-Ohio, another leading voice in the House Freedom Caucus, said it would be his preference that tax legislation not include the border-adjustment tax but that the caucus has not taken an official position on the proposal.

Meadows warned House leaders in early April that the Freedom Caucus wanted a seat at the table on tax reform and that he wanted Ways and Means to share draft legislation as part of a "member-driven, inclusive, text-driven debate." He added that members wanted to receive any draft bills directly from their congressional colleagues and not through a leak to the media.

An expanded budget window for reconciliation?

Also this week, *The Wall Street Journal* reported that congressional Republicans may be considering lengthening the time period covered by the yet-to-be-drafted fiscal year 2018 budget resolution in order to help ease the passage of tax legislation under the arcane rules of budget reconciliation.

The article, which was published May 1, cites Sen. Pat Toomey, R-Pa, who sits on the taxwriting Senate Finance Committee as well as the Budget Committee – the panel charged with drafting budget blueprints in that chamber – as one Republican lawmaker considering such an approach.

In recent years, congressional budget resolutions have been written to cover budget policy over a 10-year time span (which matches the period over which the Congressional Budget Office and Joint Committee on Taxation typically analyze legislation). But there is no statutory requirement that these budget blueprints cover a decade; for example, it used to be common practice for budget resolutions to cover only five years.

Relation to the "Byrd Rule" against long-run deficit increases: Republican leaders have been fairly open about the likelihood that they will have to move any tax reform (or tax relief) legislation under the so-called budget reconciliation process due to a likely lack of support from congressional Democrats. Provided certain strict budgetary and procedural rules are met, legislation moved under reconciliation can be passed in both chambers with a simple majority vote – a potentially powerful tool for Republicans who control 52 seats in the Senate, 8 shy of the 60 votes normally required to advance legislation in that chamber under regular order.

However, among the budgetary rules governing the reconciliation process – often collectively referred to as "Byrd Rules," named after the late Sen. Robert Byrd, D-W.Va. – is a prohibition against legislation that would increase the deficit in any year beyond the budget window (unless offset by other budgetary changes within the same legislative title). This rule was responsible for the temporary nature of the tax cuts enacted in 2001 and 2003 – by "sunsetting" those tax cuts congressional Republicans were able to circumvent a likely Democratic blockade. (Points of order raised under the Byrd Rule can be waived, but only with a three-fifths Senate majority, which is generally 60 votes.)

By extending the budget window beyond 10 years, however, Republicans could in theory delay even further into the future the date at which a temporary tax cut would have to expire. At a more basic level, such an approach may also help party leaders navigate the difficult politics of getting broad Republican support for a fiscal 2018 budget plan in the first place. (The reconciliation process can only be utilized if a budget resolution that includes reconciliation instructions is adopted by both chambers.)

For example, conservative Republicans in recent years have generally demanded that any fiscal blueprint demonstrate that it would achieve balance within the budget period – an approach that has required Republicans to propose major cuts to nondefense appropriations and programs such as Medicaid. Extending the budget window further into the future – and potentially delaying the year in which the budget plan shows a surplus – could be helpful in forging consensus between conservative and more moderate Republicans, who may be uncomfortable with the size and scope of cuts needed to show balance within 10 years.

Ryan, Brady still pushing permanent tax reform: For their part, House Speaker Paul Ryan and Ways and Means Committee Chairman Kevin Brady continue to push the vision of tax reform articulated in the House Republican blueprint, which would be revenue-neutral over the long run and therefore could be enacted on a permanent basis, even under the rules of reconciliation. (The blueprint notes its intent that tax reform would be revenue-neutral after taking into account the revenue effects from enhanced economic growth – so-called "dynamic scoring" – and relative to a "current policy baseline" that assumes temporary tax provisions are extended permanently.)

Brady noted in comments to reporters on May 1 that permanent tax policy changes are "where we get the greatest growth for the greatest number of years."

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